



Nottinghamshire County Council

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Title: Intimate Personal Relationships – staff guidance

Aim / Summary: To give guidance to staff in relation to intimate relationships involving vulnerable adults, including marriage and civil partnerships.

Document type (please choose one)

Policy		Guidance	✓
Strategy		Procedure	

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Subject Areas (choose all relevant)

About the Council		Older people	✓
Births, Deaths, Marriages		Parking	
Business		Recycling and Waste	
Children and Families		Roads	
Countryside & Environment		Schools	
History and Heritage		Social Care	✓
Jobs		Staff	
Leisure		Travel and Transport	
libraries			

Author:

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Please include any supporting documents

1. Intimate Personal Relationships Policy

Review date	Amendments
Xxxx 2014	Updated to take account of new case law.
3.9.2013	Set out in corporate template. Links checked.
19.10.2011	Department title updated, links checked and formatted.
7/7/2010	Details of safeguarding updated. Links added

Intimate Personal Relationships

Contents:

1	The Council's policy on Intimate personal relationships	2
1.1	Expectations of staff	2
1.2	Guiding principles.....	3
1.3	Service Provision.....	3
2	Capacity to consent to sexual relations	3
2.1	Loss of capacity to give consent to sex in an established relationship	4
2.2	Contraception.....	5
3	Capacity to marry or form a civil partnership	5
3.1	Co-habitation.....	6
3.2	Forced marriage	7
4	Pregnancy and parenthood	7
4.1	Sterilisation or termination of pregnancy	7
5	Information	7
5.1	Information for service users	7
5.2	Information for staff	8
6	Guidance on specific areas	8
6.1	Masturbation.....	8
6.2	Pornography.....	9
6.3	Hiring the services of a sex worker (prostitute).....	9
6.4	Inappropriate Sexual Behaviour	9

1 The Council's policy on Intimate personal relationships

This staff guidance must be read alongside the Council's policy on Intimate Personal Relationships. The guidance is to assist staff in responding to situations where:

- The person they are supporting may not have the capacity to consent to an intimate personal relationship
- They are asked for advice and information by a person who does have the capacity to consent.

1.1 Expectations of staff

In relation to intimate sexual relationships, staff are expected to:

- Act within the law
- Remember that, in terms of sexual relationships, capacity is dependent upon the person's understanding of the sexual act, not on the nature of the person they choose to have sex with. See section 2 for more information.
- Abide by the expectations of personal behaviour set out in the Personnel Handbook – [D35: Code of Conduct](#).
- Work to the standards of conduct, performance and ethics as part of their registration with the Health and Care Professions Council. See www.hpc-uk.org

1.2 Guiding principles

Implicit throughout this guidance are three guiding principles:

- In any situation, staff must make the best judgement possible, based on the information available and legal advice, where necessary.
- Staff should consult with a line manager as a matter of course when dealing with particularly sensitive situations.
- All decisions must be formally recorded

1.3 Service Provision

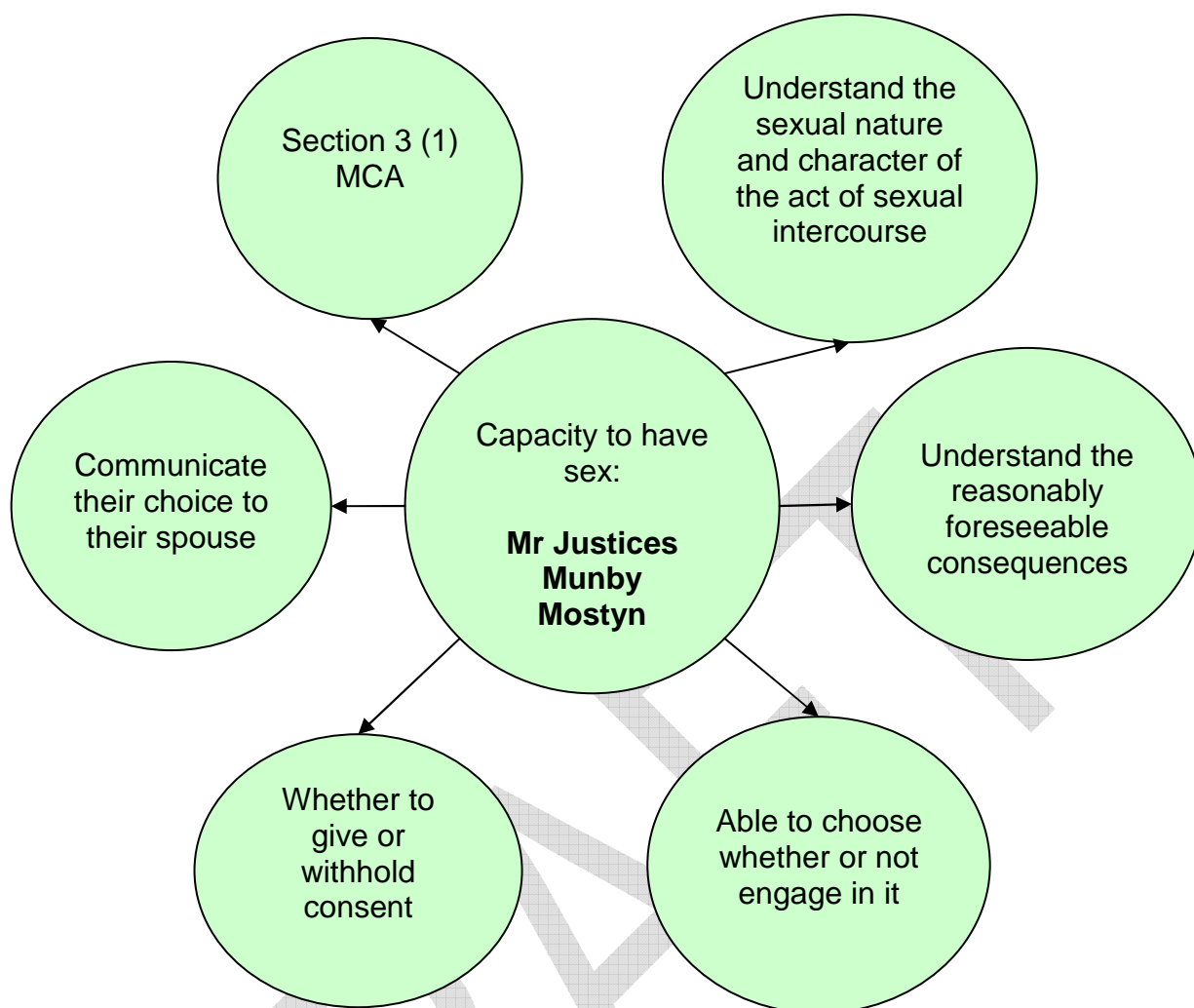
The key points to observe at all times when considering issues to do with the sexual or intimate needs of other people are: DIGNITY, SENSITIVITY, CHOICE AND RESPECT. The following points must be taken into account in this area of work:

- **Shared rooms** - if two people (whether of the opposite or same sex) living in a care home are having a sexual relationship and they have the capacity to make that decision, staff should make sure that they have access to each other's room for private time together if necessary. Requests for shared rooms should be met wherever possible.
- **Privacy** should be respected and members of staff and others should not enter a service user's room without knocking. This is of particular importance in residential settings.
- **Intimate personal care** tasks should be dealt with sensitively. Intimate personal care may inadvertently give rise to sexual stimulation, which may cause problems for the staff member and/or the service user. A risk assessment must be completed in this situation and a decision should be made about how to manage the situation. Staff must be familiar with the [staff guidance on the provision of intimate personal care](#).

2 Capacity to consent to sexual relations

If doubts are raised about a person's capacity to make a decision about sexual relations, staff must ensure that either the Mental Capacity Act – Two Stage Test of Capacity episode in Framework is completed or a report is requested from, for example, a NHS psychologist, as a way of recording evidence and making a decision regarding the person's capacity to make the decision in question. Staff should refer to the [Multi-Agency Joint Policy and Procedure on the Mental Capacity Act 2005](#) in this situation.

Capacity to consent to sexual relations is based on whether the person understands the nature of the sexual act. See the diagram below:



For details of the case law see: [Local Authority x v MM and KM \(2007\) EWHC 2003 \(Fam\)](#)

Someone who lacks the capacity to consent to sexual relations will, for that very reason, lack the capacity to marry. However, the opposite is not necessarily true; someone may have the capacity to consent to sexual relations, whilst lacking the capacity to marry.

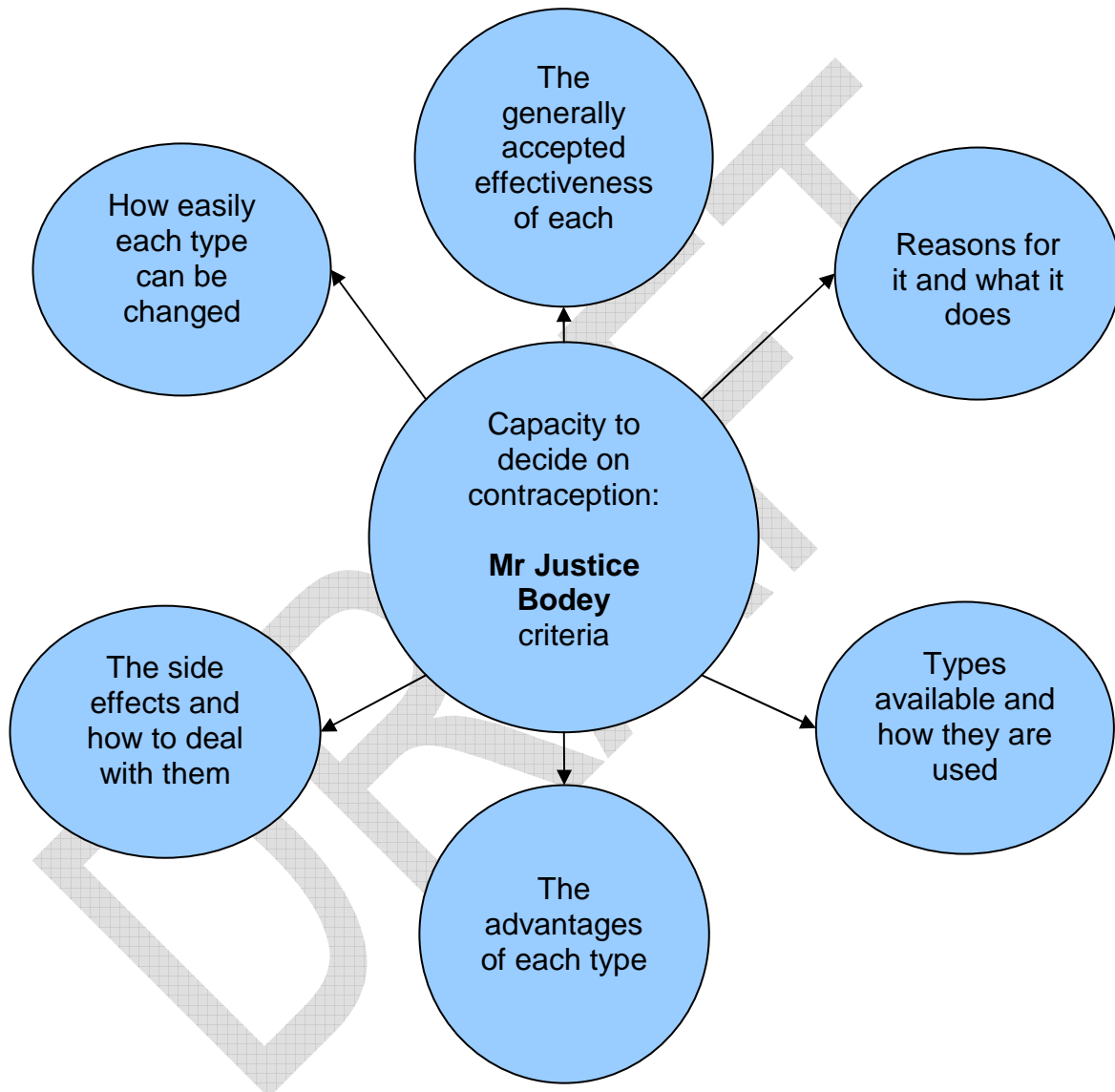
If a woman who lacks the capacity to give consent to sexual activity becomes pregnant a criminal offence will have taken place and must be investigated. When these situations arise they clearly need to be dealt with sensitively. A referral to the [MASH Team](#) MUST be made.

2.1 Loss of capacity to give consent to sex in an established relationship

Sex is illegal in situations where a couple have had an established sexual relationship in the past but one of them has lost the capacity to give consent to its continuation, Staff may come across this situation where the partner lacking capacity has been admitted to a care home and sexual activity takes place when their partner visits. Staff should follow the [safeguarding adults' guidance](#) if they think an offence is being committed.

2.2 Contraception

A test for capacity should be applied if there are any doubts about a person's ability to make a decision to use contraception. This test is the responsibility of the relevant healthcare professional, i.e the prescriber. The diagram below is reproduced to clarify understanding of the issue. Where a person does have capacity to make a decision they should be given information about contraception, where appropriate. Staff may also be involved in helping an individual to get prescribed contraceptive services by referral to a GP or family planning clinic.



For details of the case law see: [A Local Authority v Mrs A and Mr A \(2010\) EWHC 1549 \(Fam\)](#)

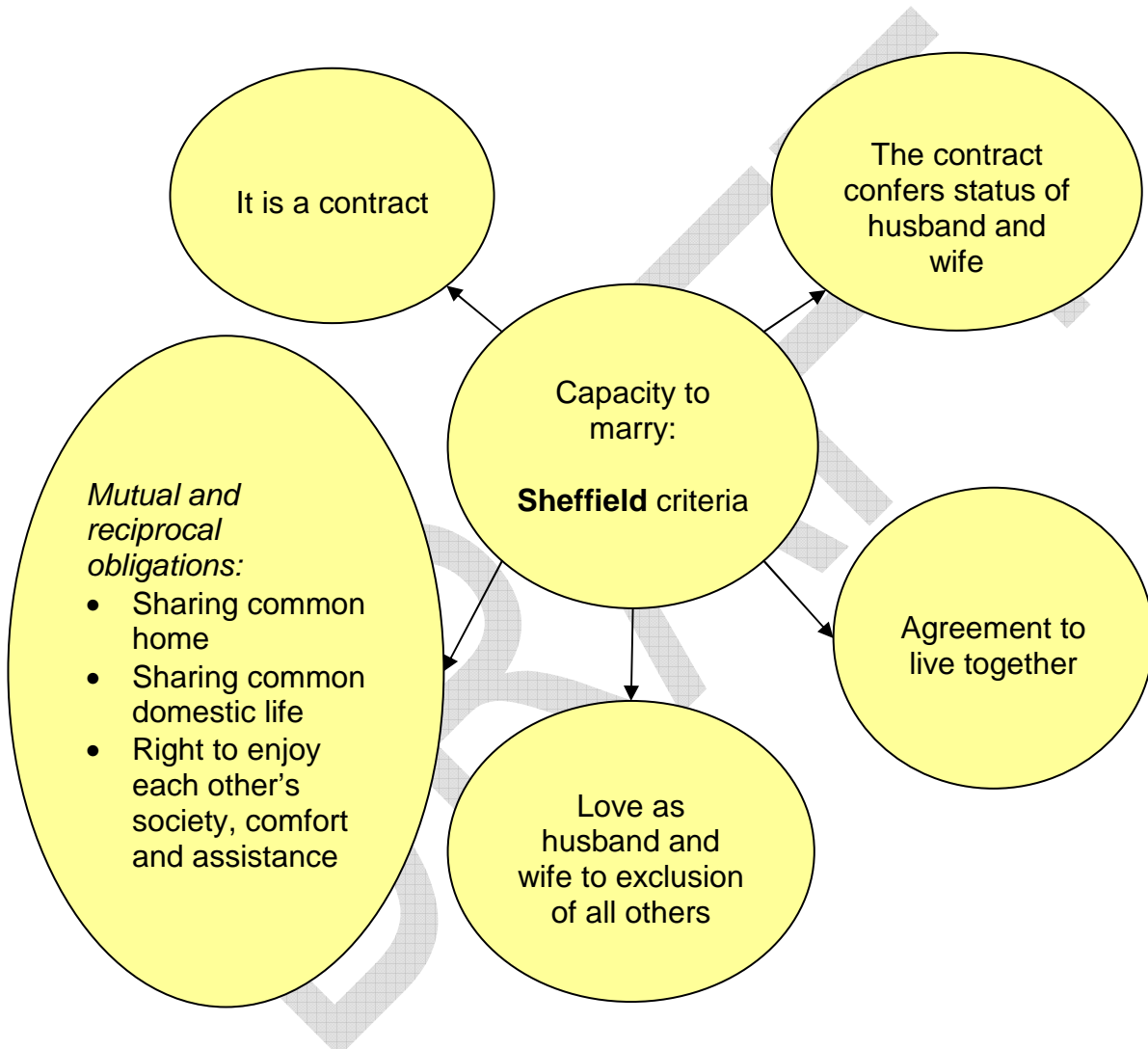
3 Capacity to marry or form a civil partnership

If doubts are raised about a person's capacity to make a decision to marry or form a civil partnership, staff must ensure that either the Mental Capacity Act – Two Stage Test for Capacity episode in Framework is completed or a report is requested from, for example, a NHS psychologist, as a way of recording evidence and making a decision regarding the person's capacity to make the decision in question. Staff

should refer to the [Multi-Agency Joint Policy and Procedure on the Mental Capacity Act 2005](#) in this situation. This **must** be done before **any** arrangements are made.

Advice may also be sought from legal services and, for marriages and civil partnerships, from the [Registration Service](#), where necessary.

Capacity to marry is based on whether a person can understand the nature of the marriage or civil partnership contract and whether they are mentally capable of understanding the duties and responsibilities that normally attach to a marriage or civil partnership. See the diagram below:



For details of the case law see:

[Sheffield City Council V E and S \(2004\) EWHC 2808 \(Fam\)](#)

Anyone wishing to marry must satisfy the Registration Service and the registrar who conducts the ceremony, or the presiding minister, that they understand the nature of the marriage vows.

3.1 Co-habitation

If a couple have the capacity to make a decision about having a sexual relationship and getting married, they can also decide to co-habit.

Where a couple both lack capacity to marry, a best interests decision can be made regarding co-habitation. However, if one or both lack the capacity to engage in sexual relations, the couple would need to be supervised to ensure that no sexual contact takes place.

3.2 Forced marriage

If staff are concerned that a service user is being forced to get married or is not able to give consent to a proposed marriage they must follow the [forced marriage guidance on the Gov.UK website](#).

4 Pregnancy and parenthood

Some disabled people who become parents, or wish to consider doing so, may need support to deal with a range of issues. They may need to explore the implications and responsibilities of parenthood, to understand the law in relation to “children in need”, to consider the level of support available to them and they may request access to genetic counselling. Staff should refer to the [staff guidance on supporting disabled parents](#) in this situation. Co-operative working between adults’ and children’s services must be established as early as possible in a pregnancy if there are concerns about capacity and child safety.

4.1 Sterilisation or termination of pregnancy

Where a person lacks the capacity to make a decision about sterilisation or to the termination of a pregnancy, case law directs that the matter should be referred to the Court of Protection by the medical practitioner proposing to carry out the operation. Other than the Court of Protection, no-one may sign a consent form on behalf of a woman for a termination or any other operation. Staff must inform the group manager about situations of this kind.

5 Information

5.1 Information for service users

Principle two of the Mental Capacity Act 2005 states that,

A person is not treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.

The [Mental Capacity Act 2005 Code of Practice](#) explains what this means. It states that,

...the kind of support people might need to help them make a decision varies. It depends on personal circumstances, the kind of decision that has to be made and the time available to make the decision. It might include:

- *using a different form of communication (for example, non-verbal communication)*
- *providing information in a more accessible form (for example, photographs, drawings, or tapes) treating a medical condition which may be affecting the person’s capacity*

- *having a structured programme to improve a person's capacity to make particular decisions (for example, helping a person with learning disabilities to learn new skills)."* (paragraph 2.7)

This means that information must be provided to a person when assessing their capacity to make a decision. In all other situations specialist resources are available from the NHS, including on [NHS Choices](#).

5.2 Information for staff

Staff must:

- Have an awareness of the current law relating to sexual relationships.
- Be aware of the [staff guidance on the provision of intimate personal care](#).
- Take up training opportunities and enter into discussions in supervision in order to explore attitudes and raise awareness of issues relating to sexuality.

If a staff member feels unable to support or offer an impartial view to service users with regard to sexual matters, they should discuss this with their line manager.

The following links may be useful for keeping up to date with case law in this area:

- **Browne Jackson Solicitors** – their website provides up to date information, including regular health and public sector legal updates, webinars and bulletins – www.bjlegaltraining.com
- **Bailii** – this website has a special page dedicated to Court of Protection case law – www.bailii.org
- **Mental Health Law online** – this webpage has links to mental capacity and mental health case law – www.mentalhealthlaw.co.uk
- **39 Essex Street** – this website provides useful summaries and discussion of Court of Protection case law and publishes a regular newsletter – www.39essex.com

6 Guidance on specific areas

6.1 Masturbation

Individuals who are unaware of their surroundings because of their sensory impairments, or who are unaware of standard social 'norms', might not easily identify an appropriate place to masturbate as defined by others. Staff, in helping clients locate appropriate venues, should adopt a manner that conveys 'it's OK to engage in this behaviour — but not here'.

Staff can teach an individual to masturbate using diagrams and descriptions with no physical contact, as long it is part of that person's agreed care plan. Touching a man's or woman's genitals could be interpreted as sexual touching which is covered under

offences in the [Sexual Offences Act 2003](#). Staff must not get involved in contact of this kind.

If individuals are expressing difficulties beyond the scope of discussion, referral for specialist help should be considered.

Staff should be sensitive to the fact that a person may indicate that he/she wants their incontinence wear removed for short period so that he/she can masturbate. A risk assessment should be done in this situation and the person should then be left alone for a specified length of time, if safe to do so.

6.2 Pornography

Individuals might request the use of pornographic material for the purposes of sexual arousal or entertainment - it is part of sexual activity for some adults. It might be used to aid the development of sexual awareness or for sexual stimulation. While staff should not encourage the use of these materials, neither should they deny access to legal pornography to an individual who has the capacity to make a choice. In situations where the person does not have the capacity to consent but needs to be shown particular types of material for educational purposes, this should be recorded in an approved support plan.

Access to materials that are believed to be illegal, for example, sexual images of children, must be stopped. Staff must inform their line manager who will report the matter to the police. If the material is on County Council premises it must be taken away from the service user.

Legal pornography includes any materials that may be legally sold by a newsagent or (UK) licensed sex shop. It may include some videos certificated by BBFC (British Board of Film Censors).

It is appropriate for staff members to stress that pornographic material should not be displayed whilst they are with the service user and that it should be used in private. In residential and independent living settings service users may depend on staff support and staff may be asked to buy pornographic material. Staff must not buy or help people to get access to illegal material, but they may buy legal material if agreed with their line manager and if they are willing to do it. The decision must be recorded.

6.3 Hiring the services of a sex worker (prostitute)

People may choose to seek the services of a sex worker. However, staff must not get involved in making direct arrangements with a sex worker or agency, even if the service user's disability makes it difficult for him or her to do it, because of the law relating to procurement for prostitution.

6.4 Inappropriate Sexual Behaviour

Sexual behaviour may be inappropriate for a number of reasons. Individuals may not understand what is regarded as appropriate behaviour. This should normally be addressed through an agreed educational programme, identified as a priority need as part of a support plan.

Occasionally in day or residential services, people may display inappropriate sexual behaviour, such as inappropriate touching or masturbating. If this behaviour affects other service users and staff, one or more of the following steps should be taken:

- Explain to the person that the behaviour is inappropriate and make sure they understand why.
- Check the individual's knowledge and understanding of the law on sexual behaviour and sexual harassment.
- Assess the capacity of the person to understand how their behaviour affects others, if necessary. Understanding may be limited by dementia or other conditions.

Where public displays of sexually inappropriate behaviour continue, or the behaviour exploits, or is oppressive to others, specialist help may be needed from, for example, a psychologist or other therapist. If the behaviour might constitute a criminal offence, for example, assault, indecent exposure or an expressed sexual interest in children, staff must inform their line manager who will report the matter to the police or to the Multi-Agency Safeguarding Hub (MASH). The [safeguarding adults guidance](#) must be followed if the behaviour adversely affects another vulnerable service user.