



Nottinghamshire County Council

Policy Library Pro Forma

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Title: Vulnerable Adults Intimate Personal Relationships Policy

Aim / Summary: To set out the County Council's policy in relation to intimate relationships involving vulnerable adults, including marriage and civil partnerships.

Document type (please choose one)

Policy	<input checked="" type="checkbox"/>	Guidance	<input type="checkbox"/>
Strategy	<input type="checkbox"/>	Procedure	<input type="checkbox"/>

Approved by:

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Date approved:

Proposed review date:

Subject Areas (choose all relevant)

About the Council	<input type="checkbox"/>	Older people	<input checked="" type="checkbox"/>
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Author:

Responsible team:

Contact number:

Contact email:

Please include any supporting documents

1. Vulnerable Adults Intimate Personal Relationships – staff guidance

2.

3.

Review date

Amendments



Vulnerable Adults Intimate Personal Relationships Policy

Context

The Council recognises that most adults who use social care services have the same sexual needs and rights as other people, irrespective of their age or disability; most will have had intimate personal relationships and raised children.

However, some people will not have, or will have lost, the capacity to give consent to the development or maintenance of an intimate personal relationship. The Council is committed to ensuring that vulnerable people in this situation are protected and that council staff act within the law.

The law relating to this area includes:

[The Marriage Act 1949](#) sets out four lawful impediments to marriage, these are:

1. The person must not be aged under 16 years
2. There must not be a pre-existing marriage or civil partnership that has not been legally dissolved
3. The two people must not be of the same sex
4. The two people must not have a prohibited relationship to one another, for example, they must not be mother and son.

The threshold for the legal capacity to marry is low and registrars/ ministers are not expected to undertake or refer people for a mental capacity assessment if they are concerned about the person's ability to consent to the marriage.

[The Human Rights Act 1998](#) applies equally to all UK citizens. Article 12 deals with the right to marry and have a family.

[The Sexual Offences Act 2003](#) forbids sexual activity between care workers and people with "mental disorders" whether they appear to give consent or not and whether they have the legal capacity to consent or not. A partial defence in this situation might be that the care worker and the person with a mental disorder are married, in a civil partnership or have a pre existing sexual relationship. However, if the person lacks capacity to give consent the sexual activity is illegal and in all situations staff must abide by the **[Council's code of conduct](#)**.

Under the Act care workers can be charged with the following specific offences:

(a) "...sexual activity with a person with a mental disorder. This covers all intercourse, other penetration or sexual touching of someone with a mental disorder. It includes sexual touching of any part of their body, clothed or unclothed, either with the body or with an object."

(b) "...causing or inciting sexual activity. This covers causing or persuading someone with a mental disorder to engage in any sexual activity, including sexual acts with someone else, or making them strip or masturbate. This offence applies where someone has incited a person with a mental disorder to engage in sex, even if the intended sexual activity does not take place."

(c) "...causing a person with a mental disorder to watch a sexual act This makes it an offence to intentionally cause a person with a mental disorder to watch someone else taking part in sexual activity — including looking at images such as videos, photos, or webcams — for the purpose of the worker's own sexual gratification. It is not intended that this should prevent care workers from providing legitimate sex education. For instance, a care worker showing a person with a mental disorder a video of a sexual act as part of an approved support plan would not be liable for this offence.

Sexual relationships with people other than care workers are also covered by the Act. If the person has incapacity related to mental disorder or to use the language of the Act, is "unable to refuse" due to lack of capacity or being unable to communicate, then sexual activity is illegal.

[The Civil Partnership Act 2004](#) enables same-sex couples to obtain legal recognition of their relationship. Couples who form a civil partnership have the legal status of 'civil partner'.

[The Mental Capacity Act 2005](#) provides a legal structure for assessing people who may lack capacity to make a particular decision. It also sets out how to act in the person's best interests if they are assessed as lacking capacity. However, section 27 of the Act specifically excludes making decisions for someone lacking capacity in relation to consent to sexual relations and consent to marriage or civil partnership. This means that no one is permitted to consent to sexual activity on behalf of a person lacking capacity.

[The Marriage \(Same Sex Couples Act\) 2013](#) makes provision for the marriage of same sex couples in England and Wales and about gender change by married persons and civil partners. It became law on the 17th July 2013.

Scope of this policy

This policy covers vulnerable people aged 16 years and over, who are in receipt of social care support, and who may or may not have the capacity to give consent to an intimate personal relationship. It covers sexual relationships, sexual activity, marriage, civil partnership and co-habitation. It does not deal with friendships and other kinds of personal relationships.

Principles and Commitments

- Social care staff will apply the 5 statutory principles, set out in [Section 1 of the Mental Capacity Act 2005](#), in relation to the intimate personal relationships of people that they work with.
- Social care staff will work to the standards of conduct, performance and ethics as part of their registration with the Health and Care Professions Council, www.hpc-uk.org
- Council staff will respect the sexual orientation of service users and will not impose their own views in relation to sex and personal relationships on the people who use its services.
- The Council will ensure that sexual expression takes place within the law and does not devalue, stigmatise or exploit individuals. Some people prefer not to be sexually active or to consider sexual issues and this will be respected.
- 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, the Council will ensure that its staff understand that sex in this situation is illegal.
- Council staff will adopt a proactive approach by making referrals to appropriate professionals for advice and support about sex and intimate relationships, rather than adopting a 'reactive' approach where action is only triggered as a result of a 'problem'.
- A support plan will be developed where a person needs information and/or advice about sexual health needs, including the development of knowledge and skills in making intimate personal relationships. This is to protect staff under the Sexual Offences Act 2003. The design of the support plan may include advice from an appropriate professional.
- Council staff will 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 make the arrangements, because of the law relating to procurement for prostitution.
- Council staff will not allow illegal pornographic material to be accessed on its premises. Material of this kind will be removed and the police will be informed.
- If doubts are raised about a person's ability to make decisions about an intimate personal relationship by anyone concerned with their care, including family and friends, a Mental Capacity Act – 2 Stage Test for Capacity or an assessment report will be completed by a competent practitioner as a way of recording evidence and making a decision regarding the person's capacity to make the decision in question. The practitioner may be a social care worker or, for example, a psychologist working for an NHS trust.
- The Council is committed to ensuring that people have access to independent advocacy services so that they are assisted, where necessary, to get their voices heard.

Key actions to meet the commitments set out in the policy

- The Council will maintain up to date guidance for staff in relation to intimate personal relationships, which takes account of changes to legislation, including case law.
- The Council will provide training for staff in relation to the law relating to intimate personal relationships for vulnerable people.
- The Council will ensure that staff working in social care and registration services understand each others roles and responsibilities in relation to marriages and civil partnerships involving vulnerable people.

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