



Position of Trust Guidance

Guidance

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1. About This Guidance

The aim of this guidance is to outline the legal requirements associated with having a legally defined position of trust and offer best practice guidelines for those working in a non-legal or informal position of trust whether paid, unpaid, over 18 or under 18.

This guidance does not supersede the law, requirements of your organisation or guidance defined by your governing body. It also does not address the broader process for assessing and managing relationships between young people, whether underage or due to a large age gap.

2. Legal Requirements

2.1 Legal Definition

'Position of trust' is a legal term defined in the Sexual Offences Act 2003. In [section 22](#) it is explained as an adult "caring for, training, supervising or being in sole charge" of a child under the age of 18.

This Act defines settings in which adults would have a position of trust e.g. hospital or an educational institution (section 21). It does not include a list of roles, but examples include:

- Teachers
- Care workers
- Youth justice workers
- Social workers
- Doctors

2.2 Current Law

It is against the law for someone in a position of trust to engage in sexual activity with a child in their care, even if that child is over the age of consent. This means that even though the child may be over the age of consent (16), it is illegal to engage in sexual activity with any 16 or 17 year old if you hold a position of trust.

Legal exceptions when in a position of trust include marriage or civil partnership, and sexual relationships that pre-date a position of trust.

2.3 Proposed Changes to the Law (*current as of April 2021, where it is being reviewed in the House of Commons*)

The [Police, Crime, Sentencing and Courts Bill](#) has proposed broadening the position of trust to include “sport” and “religion”. These sport coach and faith leadership positions are currently defined as:

- “sport” includes:
 - any game in which physical skill is the predominant factor, and
 - any form of physical recreation which is also engaged in for purposes of competition or display;
- “religion” includes:
 - a religion which involves belief in more than one god, and
 - a religion which does not involve belief in a god.

These proposed changes are not currently the law. Therefore, it is not currently illegal for someone in a coaching role or a religious leader position to have sex with a child, over the age of consent, in their care.

The National Youth Agency (NYA) believes a position of trust should include youth workers and other adults working or volunteering in settings where children are engaging in activities or support in the community.

Whilst it is not currently anticipated that the changes proposed in the Police, Crime, Sentencing and Courts Bill will be extended to include these roles, NYA consider it best practice that any youth worker is considered to hold a position of trust and follow the guidance set out in the Sexual Offences Act 2003. For the purposes of this guidance, we will refer to this as an “informal position of trust” as it is not recognised by the law.

2.4 Sexual Activity Under the Age of 16

As this guidance offers support for services being delivered to children and young people, including those that might move into an informal position of trust, we are highlighting what the law says about under-age sexual activity.

It is a criminal offence for anyone under the age of 16 to engage in sexual activity. However, Home Office guidance clarifies that the law is intended to protect children from exploitation. The law is not intended to prosecute teenagers who are engaging in consensual sexual activity and are of a similar age. This only applies to children 13 or over. See ‘Guidance on Part 2 of the Sexual Offences Act 2003’ for more information.

However, it is advisable for a risk assessment to be undertaken for any underage sexual relationships to ensure informed consent has been given by both parties, that there are no factors which could result in power imbalance and there is no peer on peer abuse.

3. Using Your Organisation’s Policies and Procedures

With no legislation in place for youth workers, it is important that all youth work is underpinned by a set of policies and procedures that outline the expectations and standards of appropriate behaviour, including sexual and non-sexual relationships.

This might include, but is not limited to:

- Code of Conduct / Expected Behaviours Policy
- Social Media Policy
- Lone Working Policy
- Conflict of Interest Policy
- Safeguarding
- Whistleblowing

4. Informal Position of Trust and Young Leaders Under 25

4.1 Defining a Young Leader and Service User

Services for young people can often be delivered in partnership with young people. This can result in situations where young people in receipt of a service move into an informal position of trust as a young leader. Real world examples include but are not limited to:

1. becoming volunteer youth leaders
2. becoming paid members of staff
3. delivering peer support services e.g. mentoring

From here on, this guidance refers to services users. This is the generic term for any young person attending or using the youth work provision.

4.2 Young Leader Assumptions

It is possible that young leaders will have, or develop, romantic relationships and this guidance aims to set out reasonable and proportionate measures to support all parties when a young leader moves into an informal position of trust.

It makes the following assumptions:

- A young leader is 13 or over and 25 or under.
- No sexual relationship should exist with any person under the age of 13. This is considered statutory rape regardless of consent or position of trust.
- It is impossible to know with certainty whether the status of a relationship is sexual or non-sexual. Therefore, any relationship should be treated as though it were of a sexual nature. For the purposes of this guidance this will be called a romantic relationship.
- The following examples assume no adult is classified as an adult at risk and that consent has been given.

4.3 Young Leaders Under 16

Any sexual relationship under the age of 16 is illegal. See section 2.4. As a result, no young leader under the age of 16, who has or starts a romantic relationship with a service user should hold an informal position of trust.

4.4 Young Leaders 16 or 17

The following guidance refers to when a young leader, who was a service user within the last 3 months *and* assumes a leadership position, develops a new romantic relationship with a service user.

1. Service user is under 16. The young leader should not be moved into, or retain, a leadership position due to the illegal nature of the relationship. See section 2.4. You may consider a sabbatical from their role until both the young leader and service user are of consenting age.
2. Service user is 16+. The young leader can hold a leadership position with the following provisos about a romantic relationship:
 - it is declared to the organisation to be recorded centrally
 - the service user has been invited to a conversation and a risk assessment is carried out ascertaining whether the informal position of trust was used to leverage the relationship or whether any coercion, pressure or grooming had occurred
 - an internal discussion takes place, and a decision is made about the level of direct involvement between the two young people in the youth work setting
 - the young leader did not breach any organisational policy or procedure in the development of their relationship

4.4 Young Leaders 18-25

Where a romantic relationship has existed prior to turning 18, their partner is over the age of 16 and the organisation is aware of it, no further action needs to be taken. However, if a young leader is over the age of 18 and their partner is still under the age of 16, the young leader must be temporarily removed from their informal position of trust until both are over the age of consent. See section 4.2. You may consider carrying out a risk assessment due to the wider age gap and the legal age of consent.

The following guidance refers to when a young leader, who was a service user within the last three months *and* assumes a leadership position, develops a new romantic relationship with a service user.

- Service user is under 16. The young leader should not be moved into, or retain, a leadership position due to the illegal nature of the relationship. See section 4.2.
- Service user is 16/17. The young leader can hold a leadership position with the following provisos about a romantic relationship:
 - it is declared to the organisation and recorded centrally

- the service user has been invited to a conversation and a risk assessment is carried out ascertaining whether the informal position of trust was used to leverage the relationship or whether any coercion, pressure or grooming had occurred
- there is not more than a one year age gap
- an internal discussion takes place and a decision is made about the level of direct involvement between the two young people in the youth work setting
- the young leader did not breach any organisational policy or procedure in the development of their relationship
- Service user is 18+. Depending on your organisational policies it may be standard procedure that any relationship is reported to the person responsible for HR and recorded centrally. If that is not the case, no further action needs to be taken.

4.5 Young Leaders No Longer in Role

Any young leader no longer representing your organisation, no longer has an informal position of trust. However, a duty of care still extends to the young people in your youth setting and you may choose or need to act in any of the following situations.

You become aware that a historical young leader is:

- using their previous position to leverage a relationship with anyone under the age of 18 but over the age of 16. You do not need to take action, but your individual organisational policies should be referred to.
- having a sexual relationship with someone 13-15
- having a sexual relationship with anyone under the age of 13

4.6 Complaints Against Young Leaders

These should be treated in line with existing organisational policy and procedures.

5. Further Support

For further support you can reach out to the following:

- Your organisational safeguarding lead
- NYA Safeguarding Hub
- NSPCC
- Your local Safeguarding Partnerships and relevant roles within them, e.g. Local Authority Designated Officer (LADO) or Single Point of Contact (SPOC)
- Child Exploitation and Online Protection Agency (CEOP)
- Relevant governing body

Appendix A. Decision Making Matrix

		Young Leader in an Informal Position of Trust		
		Under 16	16/17	18+
Service User Age	Under 16	Cannot hold a leadership position	Cannot hold a leadership position	Cannot hold a leadership position
	16+	Cannot hold a leadership position	Declared and a risk assessment	Declared and a risk assessment