



The County Council of the City and County of Cardiff

Sexuality And People With Learning Disabilities

Guidelines For Staff

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Introduction

These guidelines are intended for the use of staff who work with people with learning disabilities. They have been written in the recognition that people with learning disabilities have the same sexual needs and feelings as everyone else and have a right to these feelings. Most people develop their sexual knowledge over their growing years from a variety of different situations and experiences. Unfortunately, such experiences are often missing from the lives of people with learning disabilities. If people are to develop then we need to provide the opportunities and learning experiences for this to happen.

Undoubtedly, there will be some aspects of these guidelines with which, on the basis of their own ethical or moral code, some staff might disagree or find personally unacceptable. There is no expectation that staff should change their own values. **Equally, they would not be expected as professionals to impose their own values upon people with learning disabilities with whom they work.** Although it is accepted that good practice is the norm amongst staff, these guidelines may be useful as a basis for discussion and a format for consistent practice across the county.

Friendships

People need people

Human contact provides us with companionship, comfort, self-esteem, affection and love.

People need a wide range of relationships at different times to enrich their lives.

People with learning disabilities need help in making and maintaining friendships, help in communicating their feelings and needs, and opportunities for friendship to occur and develop – but remember that not everyone is gregarious.

We should be aware, if people move, of the affect this may have on a friendship.

Thoughts for Staff

Enable friendships by:

- Encouraging people to invite and visit friends;
- Providing space and privacy for people to entertain their friends;
- Helping people to communicate with their friends, e.g. by writing letters, using the telephone;
- Teaching appropriate social behaviour, at the same time being aware of any cultural differences;
- Encouraging people to possess symbols of friendship, such as photographs, etc;
- Encouraging people to use local community venues, places of religious worship, shops, clubs, pubs and other facilities;
- Not assuming that all friendships have a sexual connotation; and
- Not teasing people about their friendships.

Dating

Dating or courting is a stage in the development of a more intimate relationship and is something, which happens in private and in public.

Thoughts for Staff

Adults have the right to privacy and whenever possible somewhere they can take friends.

Neither under nor over emphasise the importance of this aspect of someone's life.

Developing a close relationship can be difficult and complex for everyone, and we should therefore be supportive though not intrusive. The nature of a relationship can be very sensitive and individuals should be protected from teasing, gossip or ridicule.

Whilst we must be cautious of making judgements regarding people's choice of partner, staff should be available to give guidance and advice. They should intervene only if they believe the relationship to be an abusive one.

Physical Contact

Physical contact can range from a touch, shaking hands, to more intimate caressing. It is an important form of communication, especially for people who have difficulty with speech.

The appropriateness of physical contact can vary according to culture, family, age, sex, the nature of the relationship and other factors.

Thoughts for Staff

In the past we have not always encouraged people with learning disabilities to use physical contact appropriately. In social situations we should be teaching people to shake hands instead of embracing, or to use culturally appropriate forms of greeting. It is important that adults are treated as such and we must encourage appropriate behaviour. Nevertheless, in some situations, professional carers are very important in the lives of service users – indeed in some cases are perceived as 'family' and displays of affection may be appropriate. Although we recognise the difficulty in defining boundaries between normal affection and professional conduct, the responsibility for this good practice must be with the employee.

Do not assume all people like close physical contact.

If someone uses inappropriate physical contact do not reprimand the individual, but encourage a more socially acceptable approach.

Personal Hygiene and Personal Appearances

This section applies to washing, bathing, menstruation, continence, using the toilet, etc.

Service users have the right to expect that their personal hygiene be dealt with by themselves or others, effectively, **privately**, and with **dignity**.

Thoughts for Staff

Always ensure that when helping someone clean or wash themselves, it is done in **private**.

Always ensure personal hygiene is discussed **privately**.

Teach individuals to be as independent as possible when dealing with their own hygiene.

Be aware of the range of incontinence aids available and help people make an appropriate choice based on the service user's preference, its suitability, comfort and visual acceptability. A continence adviser is available via community nurses or GP practice.

Whenever possible encourage people to choose and buy their own toiletries, perfume, makeup, etc.

Consider a person's wishes regarding the sex of the carer whenever possible in dealing with personal hygiene. The gender of the carer should relate to the task.

Support and encourage people to have a style of appearance valued by people of similar age and sex, whilst respecting individual's tastes.

Even after a lifetime of disablement people may feel sensitive about being dependent upon others for their personal needs. It is important to be aware of this in your working practice.

Masturbation

Masturbation is part of sexual behaviour for men and women. People masturbate because it is pleasurable and it relieves sexual frustration and tension. It is not harmful to people. Nearly everyone masturbates at some time in their lives. Frequent masturbation may occur as a result of boredom or frustration and may be indicative of problems in other areas of a person's life.

Thoughts for Staff

Service users must be taught that masturbation should take place in private. In residential settings, shared bedrooms sometimes make privacy difficult but staff should try to ensure that people have access to privacy. Some people have difficulty in learning to masturbate, and this can lead to sexual frustration. The feasibility of any discussion or decision about implementing a teaching programme should be a team decision. **Staff should, for their own protection, not take such decisions individually. They need the support of their team and line manager and this must be discussed and documented before any teaching plan is implemented.**

People may feel guilty about masturbation because of past reactions from others. Do not appear shocked or embarrassed, service users will quickly interpret feelings of discomfort or disgust. It is important if someone is masturbating in public, to convey that it is the setting rather than the masturbation that is wrong.

People need reassurance that masturbation is normal, that it is not damaging or harmful to them and that there is no need for any feelings of guilt. Staff need to use language that people can understand.

Old wives' tales regarding masturbation can have a detrimental affect on people and should **never** be used. Do not intrude on people's privacy – however, if masturbation takes place in public or in a shared living room etc., encourage the individual to use somewhere **private**. It may be useful to note that ineffective masturbation may be prolonged and may lead to soreness.

Birth Control

Contraception is a basic right for everyone, however, this should not be seen as a means of relieving staff or parental anxieties but related to the needs of the person.

Contraceptive advice and information should form part of an overall counselling programme for both men and women. The relative benefits and disadvantages should be taken into consideration and discussed fully with the person concerned and whenever possible the person should be encouraged to take responsibility for their own contraception.

Thoughts for Staff

Provide people with opportunities to obtain advice regarding birth control methods, in particular, people likely to be involved in intimate relationships.

Be aware of people's ethical and/or religious convictions, and how these may affect the issue of birth control. Ensure that, like any other treatment, contraceptive methods used by people with learning disabilities are reviewed at regular intervals. Do not assume that all women within a certain age group require contraception. People have the right to refuse contraception but staff should endeavour to advise them of possible consequences.

Sexual Contact and Sexual Intercourse

Sexual contact and sexual intercourse are normal intimate behaviours between two consenting adults.

People with learning disabilities have the right, so often denied them, to have full sexual relationships and the opportunity to pursue them in privacy as long as both partners are of legal age. They also have the same right to counselling and contraceptive advice as everyone else.

Some people with physical disabilities may find sexual intercourse difficult or even impossible. If staff feel someone needs advice in this area, they should consult with the case manager, who will approach the relevant people.

Thoughts for Staff

Although it is recognised that communal living has its own restrictions, staff should endeavour wherever possible to provide opportunities for privacy. Although staff have no right to intrude in sexual behaviour between consenting adults, they should be available for guidance and advice. If staff suspect sexual exploitation of a service user, they should discuss this **confidentially** with their line manager (Sexual Abuse page 10)

Marriage/Living Together

People with learning disabilities have the same rights as anyone else to marry or cohabit. The whole issue must be treated with the seriousness it deserves, and staff must be available to discuss with both partners the implications of marriage or of living with someone e.g. emotional and legal.

Marriage

Marriage is a public legal declaration of commitment between the two people concerned, but staff should be aware that the Registrar of Marriages has to be satisfied that the couple understand the implications of their actions and are capable of giving informed consent.

There are many successful marriages and relationships involving people with varying degrees of learning disabilities. However, as with other couples there are examples of unsuccessful marriages.

Living Together

Many couples choose to live together before they marry and some couples choose not to marry.

Thoughts for Staff

Service users need time to discuss the implications of making a long-term commitment to another person. We should not assume a person with learning disabilities is unable to enter into a successful marriage or partnership. We should be aware of a subtle distinction between offering guidance and influencing people's decision making. If we offer guidance, then it should not put undue pressure on an individual to take a particular direction.

The ultimate decision should be that of the service users. The professional's responsibility is to clarify the implications of various actions.

As with any other marriage, if it is not successful, divorce is an option. People may need advice and counselling, should they be considering this course of action. It is important to note that staff and/or parents often demand guarantees that a marriage/cohabitation between two people with learning disabilities will 'work' whereas there are not similar expectations of other couples.

Pregnancy and Parenting

People with learning disabilities have a right to be parents. However, these rights have to be balanced with the responsibilities of parenthood. Few causes of learning disabilities are hereditary. As children develop they need constant stimulation and learning opportunities, which not all parents can provide. Parents with a learning disability may need support in this area.

Thoughts for Staff

Addressing the issue of parenthood with our service users is understandably an anxiety provoking area for everyone. While we must be sure our service users have support at this time, we must acknowledge that staff also require support systems.

While people with learning disabilities have the same rights as other parents-to-be, in reality, their ability to parent is usually closely monitored and supervised by professionals.

During pregnancy and early parenthood parents need a supportive network and this is equally if not more important for people with learning disabilities.

The Case Manager should fully explore the existing networks of support available along with additional support, which may be required.

However, it is important to remember that we are not the parents and are careful that in giving advice and support, we do not undermine the parents' role in the life of the child.

Termination of Pregnancy

The decision to terminate a pregnancy is rarely free of conflict. In the past, termination has usually been one of the only options available to women with learning disabilities.

The woman's choice must be paramount and she should be helped whenever possible to make an informed choice. Staff should be available to give information, support and to obtain professional counselling where appropriate.

The Abortion Act 1967 requires that two doctors agree that in their opinions, made in good faith, at least one of the criteria permitting termination is present:

1. That the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were term terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or
2. That the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
3. That the continuance of the pregnancy would involve risk to the life of the pregnant woman greater than if the pregnancy were terminated; or
4. That there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Gay and Lesbian Sexuality

Gay and lesbian sexuality is part of the range of human sexuality. For some men and women, it can be a sexual preference for all or part of their lives, as can bisexuality.

Society is now more accepting of the rights of consenting adults to enjoy a gay and lesbian relationship. However, gay and lesbian sexuality is an emotive subject and may be viewed by some as unacceptable and immoral. It is important that people with learning disabilities receive consistent messages about their sexual behaviour, i.e. staff should strive to put aside any prejudices they might have and accept the persons sexuality.

People's choice for sexual preference is sometimes influenced by segregation of the sexes, which restricts opportunities for heterosexual relationships.

Societal pressures sometimes restrict people from expressing their true sexuality.

People might need assistance to assume their rights safely.

There is a difference between natural exploratory behaviour and curiosity (which may take place much later in a person with learning disabilities) and gay and lesbian sexuality.

Thoughts for Staff

Whatever a person's sexual preference they are entitled to **respect** from staff. Gay and lesbian sexuality should be considered in the same light as heterosexual behaviour, i.e. that take place in **private** and between consenting adults. People should be helped to come to terms with their sexuality. We do need, wherever possible, to make people aware that homosexual behaviour under the age of 16 is illegal.

If you are concerned about some relationships seek help and advice via your line manager.

There is no law relating to lesbian sexuality.

H.I.V./A.I.D.S

Sexually transmitted diseases can occur in both men and women. Be aware of the symptoms of these infections, e.g. soreness, unusual discharges, rash, discomfort while urinating (though these symptoms are not necessarily indicative of sexually transmitted diseases, and some sexually transmitted diseases have no obvious symptoms). These infections have commonly been associated with feelings of "embarrassment", shame and immorality. Staff should strive towards promoting a more helpful approach including educational prevention, confidential treatment and support.

Acquired Immune Deficiency Syndrome was first diagnosed in 1981. A.I.D.S is a serious illness that affects the body's ability to fight infection. To date no cure has been found.

A.I.D.S. is caused by a virus call H.I.V. (human immunodeficiency virus). H.I.V. is spread mainly through:

Sexual intercourse with an infected person.

. From an infected hypodermic needle or syringe.

From an infected mother to her baby.

Through blood or blood products (though in this country thorough screening is now carried out).

Thoughts for Staff

H.I.V. is not spread by touching, using toilet seats, sharing food, crockery or donating blood.

Anyone can be at risk whether heterosexual, gay/lesbian or bisexual. Service users should be encouraged to participate in a personal relationships course where advice and information is available on H.I.V./A.I.D.S. and safer sex.

We can protect ourselves by practising safer sex, by not injecting drugs and by taking normal hygiene precautions when dealing with people's personal care, e.g. using rubber gloves when dealing with body fluids or faeces, cleaning and covering any open wounds/abrasions.

If you have any concerns or suspicion of an infection related to our service users health, inform your line manager who will take appropriate action, and inform the relevant people.

Safer Sex

Safer sex is a more appropriate term in sex education than safe sex. Any sexual activity may carry a risk of infection from others, ranging from a cold sore, or mouth ulcer to the more serious sexually transmitted diseases.

Safer sex is **any sexual activity** that does not involve the exchange of blood, semen or vaginal fluids. This includes hugging, cuddling, touching, stroking, kissing, massage, masturbation, using condoms (condoms do not provide 100% protection and anal intercourse is particularly risky even with a condom).

Thoughts for Staff

The issue of safer sex cannot be discussed in isolation. It should be discussed in the context of people's relationships and need for responsible behaviour. Individuals need to know that having multiple sexual partners increases risk of infection. People should be encouraged to make decisions as to whether they wish to be sexually active or not. People must be aware that they have the right to say no, and may need assertiveness training and reinforcement in that.

Sexual Abuse

While we are all vulnerable to sexual exploitation and abuse, people with learning disabilities may be more vulnerable. They may be unassertive; used to obeying authority figures and may have poor communication skills.

Sex education and assertiveness training can provide an individual with the knowledge and hopefully the confidence to cope with potentially exploitative or abusive situations.

Both professionals and carers sometimes mistakenly believe that ignorance in sexual matters is the best form of protection, or they deny the sexuality of people with learning disabilities. On the contrary, people with learning disabilities need more formal information than others. Most of us learn about sexuality in a number of ways e.g. informally – school playground, media, books, siblings, peer groups, youth clubs dating etc. Individuals with learning disabilities have limited access to such experiences due to their sheltered upbringing and the segregated services often provided.

Thoughts for Staff

It has been found that most perpetrators of sexual abuse are well known to their victims. It seems therefore, that warnings about ‘strangers’ do little to protect people from abuse.

People with learning disabilities need clear and concise information about which parts of their body are private and may be touched only with consent. None of us is comfortable facing the reality of sexual abuse. Nevertheless, it is vital to be aware that we are working with vulnerable people who may not have the ability or capacity to speak up for themselves, or understand the situation in which they find themselves. It is vital for us all to be aware that sexual abuse can occur within any setting – at home, within residential settings, day care or during leisure activities. Offenders may be relatives, professionals, volunteers or informal contacts.

As secrecy is a major factor in sexual abuse, victims often find it impossible to confide in anyone especially as they may be threatened with reprisals. Detection therefore can be extremely difficult and many instances of sexual abuse go undetected for years.

In response to allegations of abuse procedures should be followed and the matter investigated.

Pornography

Pornography refers to magazines, posters and films/videos/books, which are available to all adult members of the public. Their sexual explicitness is deliberately designed to provoke sexual arousal in the observer. Pornography causes many people to feel embarrassment and/or disgust. A curiosity in pornographic material can be a part of growing up and exploring one's sexuality.

Thoughts for Staff

Allow adults, if they wish, to possess pornography, but explain how such material may offend others. It must be recognised that pornography can create an image, particularly of women, which is exploitative and unreal. This could be detrimental when forming future relationships. Ensure pornography is **only** used and kept in a private place i.e. bedroom.

Do not consider using pornographic material as a means for Sex Education, approved educational packages are available. Discussion with the line manager should take place re Sex Education Programme.

Offensive Sexual Behaviour

Some examples of the above are:

Masturbation in public or indecent exposure in public.

Inappropriate sexual advances to others.

Sex with people below the age of consent.

Thoughts for Staff

It is important to teach people with learning disabilities that certain behaviours are unacceptable and classed as offensive by the general public.

The way in which one deals with such behaviour needs to be discussed with the line manager and other staff members. A consistent approach to any problem behaviour is essential. Staff need to have access to specialist advice and information.

It is important to bear in mind that individuals may not be aware that it is unacceptable to approach strangers in a sexual manner or play with children in a way that could be misconstrued.

It is also important to teach our service users to deal with offensive sexual behaviour when it is directed at them. They need to know how to reject advances; the appropriate verbal and non-verbal responses and how to summon help in an emergency.

Parental Involvement

Many people find difficulty in accepting their son's or daughter's sexuality. Some parents of people with a disability may have additional fears about their son's or daughter's ability to cope with sexual feelings and sexual awareness. It can help to encourage families to discuss this topic with other parents and staff.

Many parents and children find discussion about sexual matters difficult and embarrassing. Some parents are happy to take responsibility for their children's sex education, while others are relieved that it is being dealt with by 'professionals'.

Thoughts for Staff

It is important to try and involve parents and gain their co-operation in setting up a sex education programme. Before embarking on such a programme parents should be given the opportunity of discussing the subject material to be used with staff, and to air their opinions and objections, if any, but if the service user is over 18, parents can neither give nor withhold consent. Every effort should be made to gain parental co-operation. If the service user is of age, and wishes to take part, they should be included in the programme. This decision should be taken jointly with management. Parents should be given the opportunity to be involved in setting up any sex education programme and to give constructive and consistent information to their child at home. However, it needs to be recognised that service users may not wish to discuss their sexuality with their parents.

Parents are not always aware of the sexual knowledge their son or daughter has acquired.

Education on Relationships and Sexuality

Education on sexual and emotional issues is a continuous process and counselling should take place as situations arise or when it is necessary. All people with learning disabilities should be given the opportunity to learn about relationships and sexuality; ideally it should start at an early age.

In reality people with learning disabilities often receive little or no sex education. In order to protect their vulnerability and to compensate for their limited access to information, their need for formal sex education is greater than ours. Should a service user need information around personal relationships, it would need to be the case manager who would set up relevant training opportunities.

Confidentiality

When a person shares information of a personal or sensitive nature with another, we expect that information to be treated in confidence. As professionals we are often aware of sensitive information or issues concerning our service users. It is not acceptable to discuss our service users **indiscriminately**.

In the interests and well being of our service users, there are instances when information has to be shared with others. Whenever possible this will be done with the full knowledge and consent of the service user.

Examples of necessary information sharing:

1. When an illegal act has been committed
2. When an individual is putting him/herself or others at risk
3. When there is a possibility of exploitation of a service user or others

There will be other instances, which will need individual consideration. Staff should initially approach their line manager who will decide on appropriate action.

Risk Taking Procedure

In the past some people with learning disabilities have been protected to such a degree that they have often not been allowed to make their own decisions or take risks. We now recognise that individuals have the right to make as many of their own decisions as is possible.

However, how do we as professionals and carers balance the acceptance of their rights and our duty to protect them from unacceptable risk? The first step is to discuss with the service user, where possible, the reason for their actions and to highlight the possible consequences to them selves and others. Sometimes this discussion will need to take place more than once to try and ensure that the service user understands and retains the information. If the risk taking behaviour persists, a meeting should be arranged between relevant individuals:

1. To plan a consistent approach to the behaviour;
2. To ensure that management are aware of the situation;
3. To provide support and acknowledgement that all avenues have been explored and that there is no easy solution.

It is important that the discussion and action from such a meeting is well documented.

Line Manager Responsibilities

Throughout this document, staff have been advised to approach their line manager (or other senior staff members) for guidance and advice regarding sexual issues.

Whilst the responsibility for taking appropriate action lies with the line manager, it is recognised that some individuals may feel more confident in this area of work than others. Line managers will not necessarily wish to undertake comprehensive training in the area of sexuality, but will be expected to acquire the basic skills needed to assess situations that may arise. Line managers will have access to training and to staff who are trained and be aware of appropriate procedures in the area of sexuality/sexual abuse in the county. Operational Managers 2 and line managers should be aware of those people in their teams who have such expertise.

Staff need to feel their concerns are taken seriously and that their line manager will provide support and feedback. They should expect that in serious instances information will be passed to senior management.

If staff feel that their concerns have not been resolved after approaching their line manager, they should approach their Operational Manager 2 who would be an alternative source of support.

If a sexual allegation is made by a service user **it must always be passed to a senior member of staff whether or not it appears valid.**

It may in some instances be illegal and will **always** be a matter for disciplinary procedure, should a member of staff to have a sexual relationship with a service user.

Sex and the Law

Introduction

The UN Declaration on the Rights of Mentally Retarded Persons (1971) calls for people with a learning difficulty to be given as far as is possible the same rights as others.

In recent years we have become increasingly aware of the rights and needs of people with learning disabilities in all areas of their lives, including their sexuality.

Staff are often faced with new and challenging situations for which there are no answers. If we look to the law in the hope of clarification we are often left confused. The laws pertaining to sexuality and people with learning disabilities are in need of a radical review. Originally they were intended to protect the vulnerable adult from exploitation but fall short recognizing their rights to develop relationships and make decisions.

The Law and Mental Handicap

There are two ways in which people with learning disabilities are affected by the laws on sexual behaviour:

1. Laws that make specific reference to certain categories of people with a mental handicap;
2. Laws that apply to everybody.

From the age of 18, people with a learning difficulty have the right to make their own decisions (from the age of 16 in case of sexual intercourse and medical consent). This is the same for all people of this age.

From this age parents, doctors and other people have no legal right to make decisions on their behalf.

Legal Definitions of Mental Handicap

Various Acts reflect the change in terminology used over the years. These terms have specific legal meanings. Learning disabilities is not a recognised legal term.

1. **Defective** Used in Sexual Offences 1956 “a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning”.
2. **Severe Mental Handicap** Used in Sexual Offences Act 1967. Has the same meaning as “defective”.
3. **Mental Disorder** Mental Health Act 1959 and 1983. Defined as “mental illness arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind”. A person does not suffer from mental disorder “by reason only of promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs”.
4. **Mental Impairment/Severe Mental Impairment** (Mental Health Act 1983) The distinction between the 2 forms of mental impairment is one of degree. In the former the impairment must be “significant”, in the latter “severe”. These terms refer to the very small minority of people with a mental handicap who need to be detained in hospital. For such detention the criteria states that the person is also “abnormally aggressive or seriously irresponsible”.

Sex Education and the Law

Staff are sometimes concerned that areas of their work such as discussion of sexual matters, contraceptive advice or allowing individuals to indulge privately in sexual activity within a staffed house may not be lawful. This is a complicated area of the law but as long as staff are not acting in isolation or without consultation it is highly unlikely that prosecution will take place though it is important to recognise that there is always discretion to prosecute. Ultimately, as with many issues in this area, staff must decide what is in the best interests of their service users. It is **imperative** that such decisions are documented and discussed with line managers and a consistent approach is agreed within the staff group.

Relevant Acts of Parliament

There are eight Acts, which are directly relevant to sexual behaviour of people with learning disabilities. These are:

1. **Sexual Offences Act 1956**
This deals, amongst other things, with the age of consent for heterosexual relationships; sexual intercourse with a 'defective'; and indecent assaults committed on either men or women.
2. **Mental Health Act (1959)**
Most of this Act has been superseded by the Mental Health Act 1983. However, s.128 dealing with sexual relationships between staff and 'patients' remains.
3. **Sexual Offences Act 1967**
This Act deals with male homosexuality, and includes specific reference to men who have 'severe mental handicap'.
4. **Mental Health (Amendment) Act 1982**
The Act updated parts of the Sexual Offences Acts 1956 and 1967 and the Mental Act 1959. Most of it has now been superseded by the Mental Health Act 1983. The amended definition of 'defective' and 'severe mental handicap' in the sexual offences legislation originates from this Act.
5. **Mental Health Act 1983**
This Act draws together the relevant and extant provisions of both the Mental Health Act 1959 and Mental Health (Amendment) 1982 and supersedes most of those two Acts.

Only a small number of people with learning disabilities are covered by the Act. For the majority the same laws apply as for the rest of the population, unless other specific provisions are made.

People with learning disabilities can only be covered by the potentially long-term provisions of the Act (in particular relating to admission to hospital for assessment) apply if the person comes within the wider, generic term: 'mental disorder'. (For more detail on mental health law, see Gostin (1983), Gostin (1986), Hoggett (1984), Jones (1988).

6. **Sexual Offences Act 1985**

This Act made changes in the sentences for certain offences. In particular it made the maximum punishment for indecent assault the same whether it is committed on a man or a woman

7. **Education Act (No. 2) Act 1986**

This Act contains a provision in s.46, about sex education in county, voluntary and special schools maintained by the local education authority. In such schools, it is the responsibility of the authority, the governing body and the head teacher to 'take such steps as are reasonably practicable to secure that where sex education is given to pupils it is given in such a manner as to encourage those pupils to have due regard to moral considerations and the value of family life'. This does not apply directly to Day Services but it would appear to be sensible for such places to bear the provision in mind. (This Act also gives governing bodies the right to decide whether or not sex education is included in the curriculum).

8. **Sexual Offences Act 2003**

A new sexual offences act was passed in Nov. 2003 and will (probably) come into force in May 2004. Among the offences listed in the new act are sexual activity with a person with a mental disorder; causing or inciting a person with a mental disorder to engage in sexual activity; sexual activity in the presence of a person with a mental disorder and causing a person with a mental disorder to watch a sexual act. The term "mental disorder" is as defined in the Mental Health Act 1983.

Specific Issues for Staff

As much of the law relating to people with learning disabilities is complex and inconclusive staff are advised to refer to "Sex and the Law" by M. Gunn published by the F.P.A. for specific reference.

Staff are often worried about the implications of condoning or encouraging people with learning disabilities to express their sexuality and often quote laws pertaining to "aiding, abetting, counselling and procuring" another persons offence. It will always be considered an offence for a member of staff to have a sexual relationship with a service user. Disciplinary and legal action will be taken.

In other instances situations would be unlikely to be brought to the attention of the police unless they were exploitative or abusive. Examples of this would be helping someone with personal hygiene, menstruation or toileting. Technically these actions may be construed as assault as service users are often unable to give consent in law. It is important to emphasize the discretion to prosecute. Ultimately the criteria must be whether or not it is regarded to be in the best interests of the service user, where staff are seen to be acting professionally, appropriately and not in their own interests and where they have line management support.

While we are working in a society where the sexual needs of people with learning disabilities are largely unrecognised it is crucial that while enabling them to live more fulfilled lives we must also protect ourselves by ensuring that our motives and working practices are seen to be beyond reproach.

January 9th 2004

