



Working pre-trial with children & young people who have presented with Harmful Sexual Behaviour



About the Bluestar Project

This guide forms part of a suite of best-practice resources developed by the Bluestar Project. The Bluestar Project was designed to understand the barriers and facilitators to accessing pre-trial therapy services among children and young people who have experienced sexual abuse. The subsequent training and resources have been designed to apply to any practitioner or service working pre-trial with any victims/survivors of any form of abuse/crime. This is the first guide to consider young people who are alleged to have caused harm.

Contact the Bluestar Project

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About this guide

This guide is designed to assist therapeutic and specialist support services when working during or after a criminal investigation with children and young people who have presented with Harmful Sexual Behaviour (HSB). The Crown Prosecution Service (CPS) published guidance in 2022 on pre-trial therapy; a set of principles to follow when providing therapy and support services before a criminal trial. However, the Pre-Trial Therapy guidelines only apply to victims of an offence and there is no guidance for young people who have harmed sexually and whose case may be under investigation.

We will outline a series of dilemmas when working pre-trial and consider not only open criminal investigations, but also the implications for cases which could be reopened. As there is no national guidance from the Criminal Bar Association when supporting children and young people pre-trial, this Bluestar guide is framed as a conversation about the dilemmas, sharing what we heard from HSB providers, and possible solutions practitioners should consider when working in this area. Further research and guidance in working pre-trial after HSB are required to enable HSB services to effectively support children and young people and minimise risks of further harm.

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Definitions

'Pre-trial therapy' (in the context of the CPS pre-trial therapy guidance) describes any therapy or support services given to children or adults during a criminal justice process. For the purposes of this document, we will apply the term pre-trial to assessments, therapy and support services during ongoing criminal investigations into alleged harmful sexual behaviour by a young person aged 10 years and over. However, the guidance in this document can be applied when working with children under 10 years old.

There are a set of principles to follow when providing victims with therapy and support during a criminal investigation and before a criminal trial, as described by the Crown Prosecution Service (CPS). The [CPS Pre-Trial Therapy Guidance](#) was published in 2022 and seeks to clarify and enable access for victims to therapy and counselling, without impacting on criminal justice processes. However, we are not aware of any such guidance for young people who have harmed sexually and may be under investigation.

Children and Young People (CYP)

For the purposes of this guidance, children and young people refers to those under the age of 18 years in line with the United Nations Convention on the Rights of the Child (UNCRC). However, it is important to note that the minimum age of criminal responsibility in England, Wales and Northern Ireland is 10 years old. For the purposes of this guidance, this means that working pre-trial only applies to children aged between 10 and 17, who can be arrested if they are accused of causing sexual harm and subsequently prosecuted

Practitioner

Any professionally trained practitioner or one undergoing training who is providing assessment and/or therapeutic intervention to a child or young person who has allegedly engaged in harmful sexual behaviour.

Therapeutic Intervention

There are a range of assessment and therapeutic approaches and support provided for children and young people who are alleged to have engaged in harmful sexual behaviour. Key messages from research and guidance on working with young people who have sexually harmed is available from the Centre of Expertise for Child Sexual Abuse (CSA Centre) and the National Institute of Clinical Excellence (NICE).

[Key messages from research on harmful sexual behaviour \(2023\)](#)

[Key messages from research on harmful sexual behaviour in online context \(2023\)](#)

[Harmful sexual behaviour among children and young people - NICE guideline \[NG55\] \(2016\)](#)

Harmful Sexual Behaviour

Harmful sexual behaviour is 'Sexual behaviour expressed by children and adolescents under the age of 18 which is developmentally inappropriate, may be harmful towards the child or adolescent themselves or others, or be abusive towards another child, adolescent or adult.'¹ In this guidance we will consider the different contexts within which harmful sexual behaviour takes place including sibling sexual harm (abuse), peer to peer abuse (child to child), and technology-assisted harmful sexual behaviour. We know that the response to HSB can be a criminal justice response or a welfare response.

Sibling Sexual Harm or Abuse

Sibling sexual harm or abuse is behaviour that causes sexual, physical and emotional harm, including sexually abusive behaviour which involves violence. It is important to note that not all sexual interactions between sibling children are exploitative and harmful; equally, it is important not to dismiss problematic or abusive sibling sexual behaviour as harmless exploration.

Peer to peer abuse

Peer to peer abuse is inappropriate behaviours between children that are abusive including physical, sexual, or emotional abuse, exploitation, sexual harassment, all forms of bullying, coercive control, hazing/initiation rituals between children and young people, both on and offline (including that which is within intimate personal relationships).

Technology-Assisted Harmful Sexual Behaviour (TA-HSB)

TA-HSB covers a range of behaviour including the developmentally inappropriate use of pornography, online sexual abuse, grooming, sharing sexual nudes, accessing or sharing indecent images.

Key messages

Key messages about working with children and young people pre-trial after harmful sexual behaviour

All children who have engaged in sexual harm have the right to access support

Most young people who have engaged in sexual harm have typically experienced maltreatment and harm themselves

Children who have engaged in sexual harm need to be supported and held accountable for their actions, to reduce the risk of future harm to others

The criminal justice system needs to see a child as a child, with the possibility of change and their lives ahead of them

The criminal justice system recognises that a criminal proceeding is often not in the best interest of a child or their family, particularly in cases of sibling abuse

When deciding on support options, the fear of notes being requested should not be a barrier to meeting the needs of the child/young person and potentially reducing future harm

If there is a safeguarding concern, practitioners have a duty to report additional information about an alleged offence or a new disclosure of harm

Background

Harmful Sexual Behaviour (HSB) is sexual behaviour displayed by children and adolescents under the age of 18 which is developmentally inappropriate, may be harmful towards the child or adolescent themselves or others, or be abusive towards another child, adolescent or adult.

This guidance specifically relates to sexual behaviour that is harmful to others and potentially meets threshold as a sexual offence under the Sexual Offences Act and/or Protection of Children Act. In 2022, a national analysis of Child Sexual Abuse and Exploitation Crimes reported over half of crimes were by children (aged 10 to 17) offending against other children, with 14 being the most common age². They noted this is a growing and concerning trend (previously thought to be a third) involving a wide range of offending including most commonly sexual assault or rape of girls and making/sharing indecent images. The majority of children alleged to have caused the harm were boys (87%). The CSA Centre also identified there is considerable concern about widespread and 'normalised' sexual harassment and abuse between students in schools.

“It is important to remember that most victims of sexual abuse do not go on to abuse others and that most children and young people who display harmful sexual behaviour do not go on to sexually offend as adults. However, older adolescents who abuse younger children, and those whose sexual behaviours involve violence, are at greater risk of further sexual offending.”

CSA Centre

The CSA Centre Key Messages from Research on HSB³ described harmful sexual behaviour amongst pre-adolescent children, most commonly at the 'inappropriate' or 'problematic' end of the continuum⁴, where their behaviour may be a way of communicating what has happened to them or an indirect response to other factors in their lives, including other forms of trauma and neglect. They also noted the vast majority of adolescents who display HSB are male and research has found that they generally have other major difficulties in their lives; including physical or sexual abuse or neglect, witnessing domestic violence, or having parents with mental health or substance abuse issues.

In our discussions to inform this document, HSB providers identified best practice support that is holistic, child-focused and involves parents/carers; with varying models commissioned from statutory, voluntary and independent sectors. The Support Matters⁵ report identified 61 services providing support for HSB nationally, with half supporting only children/ young people. Provision of support services can include the specialist harmful sexual behaviour services in the statutory sector, some of which are based within Child and Adolescent Mental Health Services (CAMHS) and youth justice services; and the independent/voluntary sector (private and charitable). The services have different operating models with some providing consultation only and others offering assessment and therapeutic intervention services.

In addition, different responses are needed depending on the child or young person's lived experience, current context and the nature of their harmful sexual behaviour(s), all of which can make guidance in this area particularly challenging.

The justice response to harmful sexual behaviour continues to vary across the UK, with the Child Gravity Matrix⁶ being variably applied by police forces in relation to sexual offences and known disparity in how cases are responded to by police and CPS in different localities. In 2019, in response to recommendations from the Lammy Report⁷ to expand the use of deferred prosecution, Out of Court disposals⁸ were identified as way of responding to children that offend. These little-known diversionary options can be either informal or formal and prevent a child entering the formal youth justice system. One option known as Outcome 22 requires the child or young person to access educational or intervention activities, like an HSB Service. (See ***Appendix 1** for more information on Out of Court Disposals – Outcome 22*). In our discussions to inform this document, we heard from the criminal justice system that responses to children that offend aim to achieve the lowest possible level of criminal justice intervention, appropriate in the circumstances.

Types of intervention/support after HSB

HSB Services may offer advice and consultation to the professional network including risk management; as well as assessment and therapeutic intervention. These offers are often holistic in nature and consider the potential drivers for the HSB, function of the behaviour and the needs this behaviour may be attempting to meet. A trauma-informed approach that is holistic and addresses the HSB alongside potential risks and concerns and aims to build on protective/strength-based factors is required.

Best practice, as identified by the CSA Centre, includes an approach that is systemic in nature working with the support network around the child or young person and their parent/carers; as well as direct work with the child and family, including siblings and wider family where indicated. This may include psychoeducational and therapeutic elements to the intervention.

Our discussions with HSB services identified the following interventions:

- Risk management and safety planning to reduce the risk they pose to others and themselves
- Building on strengths and family dynamics, including ability to protect and supervise
- Using family and/or support networks to manage emotional regulation and resolve problems
- Understanding their harmful sexual behaviour, in a way that is appropriate at the pre-trial stage
- Engagement that takes account the typical response of denial of the behaviour
- Sex and relationships education including consent, boundaries and social and moral considerations - including sexual and gender identity
- Developing empathic processes for the future
- Making good choices to keep themselves and others safe sexually online and offline
- Life story work to understand their own victimisation and trauma experiences
- Developing skills essential for positive peer relationships
- Community reintegration for those who have spent time in residential or secure units, with additional support for family members to reduce risk of reoffending
- Creating an understanding of the criminal justice system and processes
- Support to make future plans and hopes for the future
- Restorative work, where indicated

See [Appendix 2](#) for further information on national support services.

Benefits of pre-trial therapy and support after HSB

There is limited research related to supporting young people pre-trial after HSB and historically there has been a reluctance to offer support to young people who have harmed sexually while there is an ongoing police investigation. Anecdotally, specialist services report this is due to fear of incriminating the young person and worries about contamination of the criminal justice process.

Further research is required to determine what the barriers and risks are to providing therapy and support services for HSB pre-trial, particularly hearing the voice of young people and families, and their legal representatives. This research would build on the [Keeping Secrets](#) research understanding the barriers to children and young people that are victims of sexual harm accessing support.

Feedback from specialist HSB services suggest the benefits of support may include:

- Restoring the child or young person's hope for the future
- Reduced risk of self-harm/suicide
- Better emotional and mental health outcomes
- Collaborative safety planning/ risk management to ensure needs are met and increase public protection
- Help to restore dynamics within the family and potentially reduce family separation
- Advocacy for the rights of the child or young person, resulting in less prohibitive restrictions
- Increasing likelihood of children being able to return to mainstream education and re-integrate with peers
- Potential for a reduction in exclusions or managed moves in education
- Support during the lengthy investigations of up to 2 years
- An opportunity to expedite case progression and reduce drift
- Potential for an increased awareness of Outcome 22⁹
- Potential for a reduction in entrants to the criminal justice system for HSB

Supporting children who have engaged in harmful sexual behaviour and have been harmed

Research indicates that children and young people who have engaged in harmful sexual behaviour are likely to have experienced abuse themselves; with three quarters of children attending Be Safe¹⁰ experiencing one or more adverse childhood experiences and a study by Hackett finding a similar level of domestic violence to victims of exploitation¹¹. This demonstrates the high level of vulnerability many young people with HSB have. In a recent study of boys in UK custody for a sexual offence Allotey¹² identified that 100% had experienced at least one ACE and 37.3% had experienced between 8 and 11 ACEs. The most commonly occurring ACEs were emotional harm, bullying, caregiver instability, neglect and domestic abuse.

The CSA Centre review of HSB research¹³ identified

“that boys who have committed a sexual offence, or have been referred to specialist services because of concerns about their behaviour, generally have other major difficulties in their lives; these include experience of physical or sexual abuse or neglect, witnessing domestic violence, or having parents with mental health or substance abuse issues”

and

“when harmful sexual behaviour involves siblings, it may occur within a context of family violence and neglect”.

Therefore, any approach to working with this group of children and young people should be trauma-informed and consider the impact of abuse and trauma. Assessments and intervention programmes should take this into account and consider how these may have contributed to the HSB and how these experiences will be addressed.

“It is important to remember that most victims of sexual abuse do not go on to abuse others and that most children and young people who display harmful sexual behaviour do not go on to sexually offend as adults. However, older adolescents who abuse younger children, and those whose sexual behaviours involve violence, are at greater risk of further sexual offending.” CSA Centre

Service dilemmas and challenges

Services face a series of dilemmas specific to working 'pre-trial' with children who are alleged to have displayed harmful sexual behaviour (including sibling sexual harm) and whose criminal proceedings are not yet concluded. Additionally, where there is a 'no further action' (NFA) decision taken by police or Crown Prosecution Service there is a small chance that the investigation could be re-opened, for example under the Victim's Right to Review (VRR)¹⁴ scheme.

1 Fear of self-incrimination

By speaking with the therapist or support service a child or young person could provide evidence which supports a prosecution against them which can undermine psychological safety. At what point is it 'safe' for a child to speak openly about the alleged harmful sexual behaviour, or for a practitioner to ask them about it, if ever? This can be especially challenging if that behaviour is linked to their own experiences of being a victim of sexual abuse and/or other forms of trauma. This may be less of a concern when the criminal investigation is complete, or when the allegation is of TA-HSB where usually the evidence is tangible and will be identified through a search on devices.

2 Children and parent/carers decline service

Concerns about self-incrimination, compounded by the stigma if their behaviour became more widely known, could encourage the child and/or parent/carer to decline the support services and therefore not receive appropriate specialist input. In addition, parent/carers are often actively dissuaded by legal advisors, social workers or police from talking to their child about HSB allegations. This echoes the secrecy and silence surrounding sexual harm and can leave children and parent/carers isolated.

3 'No comment' interviews

Tension between advice routinely given by legal representatives to give a 'no comment' police interview versus the child or young person being able to talk about what has happened. 'No comment' interviews can create difficulties for support services who receive minimal information about the child who has been accused of HSB and their version of events. They may need to ask the child about their (alleged) sexual behaviour as part of their assessment. Additionally, a 'no comment' interview precludes access to 'out of court disposals' when such disposals might often be in the best interests of the child who is alleged to have caused harm.

4 Note keeping in structured assessment frameworks

Most sexual risk/needs structured assessment frameworks used by support services ask for details about the child who has harmed's sexual behaviour and/or their thoughts and feelings before, during and after the sexual abuse. This information will potentially be captured in case notes and assessment reports which could be requested by police/courts via a 'reasonable line of enquiry'.





5 Ensuring informed consent

Practitioners must communicate the dilemmas about note keeping and self-incrimination to the child and parent/carer clearly, without discouraging engagement. Practitioners need to provide information to the child who caused harm and their parent/carer so they can consider whether it is in their best interests to engage openly with the specialist service at that time. There is currently no research into the frequency of requests for specialist support service notes as evidence in HSB cases or data on the prevalence of HSB cases being reopened under the Victims Right to Review scheme. However, following Operation Soteria there has been a shift in the police investigative lens away from the victim and to the alleged perpetrator. In future, more notes requests from HSB services are anticipated and without national guidance for accessing notes pre-trial in place, the barriers to accessing support are likely to remain.

6 No choice about support

Ideally pre-trial therapy and support services should be accessed on a voluntary basis. Some processing therapies, particularly if the child has experienced their own abuse, will require the child or young person to recall the traumatic events. The evidence base suggests that therapeutic intervention works best when children have choice and can build a trusting relationship with their practitioner. Lack of choice, or ability to speak about the complexity of issues, could prevent children who have demonstrated harm from understanding the impacts of their behaviour and working towards their own sense of healing.

Responding to service dilemmas and challenges

DILEMMA 1

Self-incrimination - by speaking with the therapist or support service a child or young person could provide evidence which supports a prosecution against them and this can result in them declining a service.

When thinking about the risk of self-incrimination, it is important to differentiate between support services delivered pre-trial and post-NFA. Anecdotally, in our discussions with a range of HSB providers we heard that most police investigations conclude with no further action. The Centre of expertise on child sexual abuse¹⁵ found in 2022/23 that only 11% of all reported sexual offences against children (alleged to have been caused by adults or other children) resulted in a prosecution. However, focusing on those allegations of HSB, the proportion of defendants who are under-18 and prosecuted for child sexual abuse offences has reduced from 13% in 2006¹⁶ to 6% in 2017 and down to just 2% of defendants in 2022. This could be due to the introduction of the outcome 'Further investigation not in the public interest', which was created to avoid criminalising children in 2015/16. By 2022/23, 11% of all investigations were recorded under 'Further investigation not in public interest' outcome.

Further research is required to determine the changing outcomes for investigations of HSB but there appears to be shift away from criminalising under-18s.

In our discussions with a range of HSB providers, we found that during a criminal investigation most approached with caution any discussions which could generate new material; whereas after an NFA, they reported children or young people may feel more able to speak about the detail or motivation for the harm. Regarding the risk of post-NFA cases being reopened under the VRR, no statistics were available at the time of writing to indicate the frequency/proportion of this happening, but anecdotally it was cited as an extremely rare occurrence (though not unheard of) by experts in the field who were consulted. Further research would enable services to be able to advise children and young people of the likelihood of a case reopening. *See section on **Contracting and Consent**.*

We suggest that the principles of the CPS Pre-Trial guidance¹⁷ should be applied to children and young people who are 'the accused':

- Practitioners agree boundaries around what they will and will not talk about with the child or young person as part of their contracting agreement; and remind them of the confidentiality boundaries regularly
- Police have a legal basis on which to request therapy and support notes from an HSB service as part of a criminal investigation but only as part of a reasonable line of enquiry

- Material generated during therapy and support services constitutes 'sensitive data' and can only be processed on the basis of:
 - Consent of the victim (data subject)
 - Law enforcement purposes
 - Safeguarding risk - the child or someone else
- Children have a right to privacy in line with Article 8 of the European Court of Human Rights and a right to be consulted about what affects their lives under the UN Convention on the Rights of the Child, Articles 3,12 and 39¹⁸

More information is available in the [Bluestar Practice Advice- Taking a trauma informed approach to third party notes requests](#) and [Bluestar Pre-Trial Therapy Protocol](#).

DILEMMA 2

'No comment' interviews - advice to give a 'no comment' police interview can create difficulties for support services who receive minimal information about the child's version of events.

We recognise that children subject to allegations of harmful sexual behaviour are usually assigned legal representatives who may not be youth specialists. Consequently, a child-centred or 'Child First'^{19,20} approach is not always understood nor is it advocated for, often resulting in the advice being given to children to provide 'no comment' at police interview.

When children give a 'no comment' interview they are not eligible for formal Out of Court disposals, which require a 'clear, reliable and unambiguous admission to the offence'. We understand that police officers are not permitted to 'entice' a suspect to admit guilt to receive an Out of Court disposal, however youth-specialist legal representative may be more familiar with and negotiate this course of action. The Child Gravity Matrix²¹, updated in September 2023,

provides the framework for some sexual offences to be responded to by way of Out of Court disposals, however in our discussions to inform this document we heard that the Matrix is not reliably known about, understood or applied by criminal justice professionals (this includes police officers and legal representatives). Consistent application of this tool could be improved via better training for legal representatives and liaison at the earliest stages between police and youth justice services. (See [Appendix 1](#) for more information on *Out of Court Disposals – Outcome 22*).

It is likely that local practice differs widely and perhaps some therapy and support services do benefit from strong links between youth justice and police, which positively influence the treatment of children and young people at the earliest stages of the criminal justice process.

We suggest that the following should be considered when supporting children and young people who are advised to give a 'no comment' police interview:

- Therapy and support services should use as the basis for any discussions about (alleged) harmful sexual behaviour, the victim's witness statement or any documents which contain an account provided by the child under investigation, such as a referral/report from local social worker
- Therapy and support services should confirm with the police the exact charge(s) made against the child under investigation, any bail conditions or Out of Court disposal requirements. This information should be used as the basis for the discussions with the child and any assessment documentation. *See section on **Note keeping***

DILEMMA 3

Note taking during structured assessment frameworks - exploring the details about the alleged harmful sexual behaviour and/or the child's thoughts and feelings.

HSB services working with children and families will often use structured assessment frameworks (such as AIM3/ AIM Under 12, PROFESOR²²) to explore the details about the harming child's sexual behaviour and/or their thoughts and feelings, which carries risks of self-incrimination. In our discussions to inform this document, we heard that HSB providers avoid asking questions which pertain to factual details of the alleged offence and behaviours, or use third person discussions to reduce this risk. Instead they use the allegations

outlined in the referral documents or victim's witness statement (which may be more reliable as most children and young people will minimise or deny their behaviour).

This practice mirrors the CPS Guidance when working with victims of sexual harm, and not asking leading questions about the details of the abuse. However, practitioners we spoke to acknowledged the limitations and implications of conducting a structured assessment in this way.

We suggest that the following should be considered when using structured assessment frameworks:

- Practitioners should not be concerned about limiting factual information in a risk/ need assessment to minimise self-incrimination by the child. Assessments can still provide a holistic recommendation of interventions needed, without the fine detail of what happened. They should always be led by the needs of the child
- Practitioners could consider the use of structured judgement tools which do not seek offence/ behaviour specific information
- Practitioners could provide two analyses of risk using the different accounts of the accused and victim, if there is significant discrepancy

DILEMMA 4

No choice about support - Sometimes accessing pre-trial therapy and support services can be a requirement of the criminal justice system. Practitioners should still explore the dilemma of self-incrimination and seek informed consent.

Pre-trial therapy and support services should be accessed on a voluntary basis. However, sometimes children and families can feel that accessing help is a requirement of the criminal justice process or an Out of Court disposal makes it a requirement. Where children

and families are required to access a specialist support service as part of a formal Outcome 22 agreement; it is still important to take time to seek informed consent and contract with the child and family. *See section on Contracting and Consent.*

We suggest that practitioners should seek the informed consent of the child and/or family by explaining:

- The assessment and therapy support options that are available at the HSB service
- How their information will be stored and when it will be shared, including safeguarding responsibilities of the HSB service
- How the service will respond to a request for 'material generated as a result of therapy or support'

Additional considerations for children and young people

Children, young people and their parent/carers face other issues related to delayed access to support after HSB:

1 In whose best interests?

When criminal justice processes reach their conclusion with an Out of Court disposal (such as a Youth Conditional Caution or Community Resolution) or even a conviction; this can be in the best interests of the child who has engaged in harmful sexual behaviour as they can then speak freely and receive uncompromised specialist support. However, certain Out of Court Outcomes may feel in conflict with the justice needs of the child who has been harmed. In the case of sibling sexual abuse, it may be in both the children and parent/carers best interest for intervention to be available for the child who has caused harm at the earliest stage possible.

2 The heightened risk to self

Some young people who have been accused of HSB, are vulnerable to self-harm, anxiety and other mental health difficulties, which should be considered when making decisions about the timing of support.

3 Missing the window of opportunity

Investigations and justice processes can be ongoing for several years, and waiting for this to finish may mean missing the window of opportunity for intervention resulting in potentially worse outcomes.

4 Risk averse behaviour by professionals

The lack of expert support from HSB services can result in disproportionate restrictions being put in place, such as preventing a child or young person from attending school, engaging in age-appropriate activities or maintaining peer relationships in a safe way. Equally, the lack of input could lead to an under-response, such as no safety plans for the child who has allegedly been harmed.

5 Presumption of guilt

Social care and schools progress with safeguarding decisions based on a lower threshold of concern than the criminal justice process. Safeguarding actions can be taken, such as school suspensions or foster care placements, long before criminal justice processes even start, leaving the family coping with presumption of 'guilt' and 'risk'. These presumptions of risk and guilt can affect the engagement of the child or young person in assessment and interventions.

Practical advice and resources

Referral into service

HSB services across the country have different referral pathways and criteria; offering a range of consultation, assessment and intervention services for children and young people who present with harmful sexual behaviour. In addition, there are a number of national services detailed in **Appendix 2** offering support and advice to professionals, such as the Stop It Now²³ helpline.

Having clear information about the allegation(s) will help determine what is offered at the outset, assist in risk management and safety planning, and help inform the most appropriate therapeutic intervention or support. Some services might be invited to attend multi-agency statutory strategy meetings where HSB has been alleged but this will depend on local protocols and responses. The Keeping Bristol Safe Partnership provides a protocol²⁴ and example guide for strategy discussions²⁵ for multi-agency partners working with HSB.

When a referral is received for a child where HSB is alleged, it is important that therapy and support services are aware of any ongoing or potential future criminal investigations. Relevant questions to ask on a referral form include:

- Are there any ongoing criminal investigations related to the reason for referral?
- At what stage in the criminal justice process is the case?
- What are the likely timeframes (if known)?

At the point of accepting a referral, if there is an open criminal investigation, the service should request a 'Summary of the Allegation' from the officer in the case (OIC). Some Police forces may not be able to release a Summary of Allegation to therapy services. In these instances, it would be beneficial to ask the OIC, at minimum, to name the specific offence(s) under investigation.

Contracting and consent

Discussions about informed consent with a child or young person and their parent/carer are crucial to establishing the parameters for the support, whether the support is pre-trial or post 'NFA'. An important part of contracting when you are supporting a child or young person includes introducing them to the concepts of record keeping, information

sharing, confidentiality and disclosure of notes as part of the criminal justice process. Special consideration may need to be given for those with neurodiversity, depending on their capacity to make an informed consent; as well as those who may want to make their own decisions about accessing support and are Gillick Competent^{26,27}.

Key facts to share about therapy and support services for HSB pre-trial include:

- The practitioner will not ask you to recall the detail of the allegation, relying instead on information shared when you were referred
- Confidentiality applies unless you give your consent for information to be shared with a third party or if you disclose that you or someone else are at risk and need safeguarding
- Any new information about the allegation under investigation or new disclosures will need to be recorded and may be shared if there are safeguarding concerns
- As part of the criminal justice process, the police, Crown Prosecution Service or your lawyer may request to see the session notes
- How the service will respond to a request for 'material generated as a result of therapy or support'. This request may extend to any work undertaken with the child or young person such as therapeutic work, restorative letters. This should be in line with the Safeguarding and Data Protection requirements of the organisation and comply with legislation on Subject Access Requests

After providing information about working pre-trial, the child or young person's written agreement should be sought at their first appointment, before therapy or support services commence. Many services will have standardised agreements for undertaking assessment and therapeutic intervention.

We recommend that there is a signed consent agreement which clarifies information sharing principles, including the possibility that information can be requested by the police, CPS or courts at the point of the therapy or support service, or afterwards.

Suggested content for 'Agreement for Service'

An agreement, contract or consent agreement for therapy or support services should explain:

- ✓ How information shared by the child or young person will be stored and used
- ✓ That there are times when the service cannot keep information confidential – such as disclosure of a new harm against another child or young person
- ✓ That a court can make a Witness Summons for notes that are relevant to the investigation
- ✓ That if the child or young person shares additional information about the known harm, the service will record the disclosure and that may need to be shared
- ✓ How the service will respond to a disclosure of notes request from the police or CPS, including seeking consent from the service user

Children, young people or parent/carers may wish to seek legal advice prior to consenting to a service. If children and families are required to access a specialist support service as part of an Outcome 22 agreement, it is still important to take time to seek informed consent and contract with the child and family.

Note keeping

Note keeping in sessions should follow existing organisational and professional guidance on record keeping, information sharing and information security; as well as the current information governance requirements. In addition, there should be a particular focus on

ensuring notes are factual, accurate and timely and do not include the practitioner's self-reflections or interpretations. Practitioner's hypothesis and reflections should be in supervision notes, which would not form part of the notes requests.

✓ Session notes should be simple, factual, and succinct, including only:

- The presentation of the child, young person and/or parent/carer, including any factors necessitating risk management or safety planning e.g., self-harm
- Who was present and "role" including the practitioner
- The time/date/length of session/ location of session
- Topics discussed or the overall theme of the session
- Resources used, e.g. sand tray, conversation cards or paint
- Strategies discussed, e.g. deescalating, distraction or dissociation
- Simple formulation – when applicable - avoiding hypothesis or interpretation
- Next steps/Plan, including onward referrals and decision making where relevant



Session notes should not include:

- Exact or verbatim detail of what was said, unless a new or additional disclosure of harmful sexual behaviour is being recorded
- The therapist's self-reflections or hypotheses (as if they were factual)
- The therapist's interpretations (as if they were factual)
- Jargon, acronyms, or generalisations, e.g. 'Jim has attachment issues'. The use of jargon in notes might cause a client accessing their record to feel stereotyped and unvalued

If the child or young person shares factual information that is then recorded, this must be made clear by the use of quotation marks or some other means, e.g., 'the client said that...'

If the client's words are recorded in the notes, they must always be accurately quoted, especially where dates, places, times or names are included

New or additional disclosures during therapy and support services

Although practitioners may be avoiding asking questions which pertain to factual details of the alleged offence and behaviours, and instead using the allegations outlined in the referral documents or victim's witness statement; it is possible that a child or young person may mention additional details or disclose a new harm. Having ensured they are familiar with the allegation(s) before the session, the practitioner should be aware of any new or additional disclosure about the case or any new incident as it is being shared.

If the practitioner suspects a child or young person is making a new or additional disclosure, they will need to commence taking detailed notes – verbatim where possible – of what is said by the child or person and by the practitioner. It may be helpful to

remind them of the information sharing requirements and that these notes could be requested as evidence for the criminal justice process. They should ask them to confirm the notes for accuracy and inform them of who the information will be shared with and of the likely next steps, considering any additional needs of the child.

Immediately following the session, the practitioner should finalise the session notes, adding any further details, including times and location. Practitioners have a duty to report any new or additional disclosure made by a child or person directly to the multi-agency safeguarding hub, if there are safeguarding concerns. In these cases, HSB services should follow local/service-level safeguarding procedures.

Responding to notes requests

As part of an investigation, session notes could be requested if they include new or additional disclosures about the alleged offence(s). The Criminal Procedure and Investigations Act states that the police are obliged to follow all reasonable lines of inquiry and may seek to request 'material relevant to the case'. The police and CPS may be seeking to identify any material 'which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused'.

The Attorney General Guidance 2022 issued for investigators, prosecutors and defence practitioners details the disclosure process:

- Police - pursue all reasonable lines of inquiry and keep a record of all material relevant to the case
- Prosecution - engage with the police and advise on reasonable lines of inquiry
- Defence – receive any material which could reasonably assist their case

When receiving a notes request from the police or CPS, the practitioner should expect to receive as part of the request:

- An overview of the allegations
- Issues in the case the police are seeking to evidence from the notes
- Details of the type of notes requested, e.g. session notes, letters and the time period in question
- Agreement from the child or young person whose notes they wish to view

Practitioners are encouraged to seek the above information from the police or CPS before commencing the note-sharing process. If the child or young person has not agreed to share their notes, the notes should not be released. However, they should be informed that the crown court can be asked to make a court order which would require the HSB service to share the information the police have asked for. It is considered best practice to share with the child or young person the notes that will be shared.

Responding to court requests

Even where consent to share is not granted by a child or young person alleged to have caused harm (or their parent/caregiver), the service has a legal duty to share information following a court order or Witness Summons (previously subpoena). The process of note sharing in this instance is similar to the process following a police or CPS request (described above).

Responding to court requests:

- Confirm that the request is from a solicitor's office and that the accompanying court order relates to the child or young person
- Confirm the exact details of notes requested and the date for submission of the notes
- Contact the organisation's Information Governance lead and/or legal team for assistance with a timely response and advice on redactions
- Extract the notes requested
- Redact the notes as necessary, ensuring a valid rationale for redaction with a supporting legal framework
- Provide the redacted notes to the service manager for review
- Provide the redacted notes to the information governance lead, data protection officer and/or legal team for review and sign off
- Offer the child or young person (and their parent/caregiver) a session with the therapist to read the notes before they are sent to the solicitor's office
- Provide the redacted notes to the solicitor via secure email

Appendix 1: Out of Court Disposals

Out of Court Disposals are the different ways of responding to children that offend by resolving a situation without going to court. They can be either informal or formal, and don't involve a decision made through a court process. The criminal justice system responses to children that offend aim to achieve the lowest possible level of criminal justice intervention, appropriate in the circumstances.

1. Formal options

Formal out-of-court disposal options include Youth Caution or Conditional Caution. They do result in a child entering the youth justice system and will appear on a criminal record check. Case management guidance for the Youth Justice Board²⁸ sets out that formal out-of-court disposals should not be routinely used with children committing first time and less serious offences. Their use should be reserved for children who would otherwise receive a court sentence.

2. Informal options

Informal out-of-court disposal options include Community Resolution, No Further Action or a Deferred Prosecution/Caution.

These disposals will be recorded on police systems under the following outcome codes:

- Community Resolution (Outcome 8)
- No further action
- ↳ (Outcome 22) - used when diversionary, educational or intervention activity has been undertaken and it is not in the public interest to take any further action
- ↳ (Outcome 21) - used when further investigation, that could provide sufficient evidence for charge, is not in the public interest (includes dealing with non-abusive sexting offences without criminalising children)
- ↳ (Outcome 20) - used where action resulting from a crime has been undertaken by another agency or body other than the police, subject to the victim being made aware of the action being taken
- Deferred Prosecution/Deferred Caution - used when a prosecution or caution is put on hold until a diversionary activity is undertaken within a specified period of time

Informal options do not result in formal entry to the youth justice system and the child will not get a criminal record. However, information about the offence will still be kept on local police databases and therefore could be disclosed on enhanced DBS (Disclosure and Barring Service) checks.

Appendix 2: Useful information / National HSB Support services

This section includes some national support services that are available for advice and support

Lucy Faithfull Foundation

A charity working to prevent child sexual abuse. It supports people who pose a risk by diverting them from causing harm, as well as individuals and families affected by abuse. Professionals can be supported through advice, training, assessments, interventions and consultancy.

Stop It Now 0808 1000 900 (confidential helpline) Supports adults worried about their own - or another adult or young person's - sexual thoughts or behaviours towards children. The anonymous helpline and online self-help give practical advice and information to help keep children safe.

Shore

A website that provides a safe space for teenagers worried about their own or a friend's sexual behaviour. The anonymous live chat and email allow young people to get advice and support on issues relating to online and offline sexual behaviour.

Kooth

An online resource for young people to get support with their mental health, including a direct messaging service, online discussion board, journal functions and other activities.

Brook

Fighting for healthy lives - A large national support resource for young people and professionals providing guidance on sexual health and providing training for professionals on how to deliver these messages to young people.

CEOP Education from the National Crime Agency

An education and training team that provides resources for children, parents and professionals to protect children from online sexual abuse that includes resources for children from ages 4 – 18, informative articles and a training programme.

NSPCC NCATS

NSPCC NCATS can be contacted via telephone or email and they provide assessment, treatment, consultation and training for young people and those working with them, who are displaying HSB.

IWF – Think Before You Share - Need Help with Nudes?

The Think Before You Share campaign is to support young people, parents and professionals with information on nude image sharing and online safety. The campaign website includes links to the Report Remove tool that enables young people to confidentially report and take down nude images.

Professionals Online Safety Helpline

A helpline for professionals working with young people who have concerns around online safety this includes a helpline 03443814772 and email address helpline@saferinternet.org.uk

Centre for expertise on child sexual abuse

Supporting professionals to improve identification and response to child sexual abuse through evidence-informed resources, training, and guidance.

NSPCC Learning

Library of resources and training for professionals

References

- 1 Hackett, S., Holmes, D., & Branigan, P. (2016). Harmful sexual behaviour framework: An evidence-informed operational framework for children and young people displaying harmful sexual behaviours. (Second Edition) National Society for the Prevention of Cruelty to Children (NSPCC).
- 2 National Analysis of Police-Recorded Child Sexual Abuse & Exploitation (CSAE) Crimes Report.VKPP. 2022. <https://www.vkpp.org.uk/assets/Files/Publications/National-Analysis-of-police-recorded-CSAE-Crimes-Report-2022-external.pdf>
- 3 CSA Centre - Key messages from research on children and young people who display harmful sexual behaviour. Di McNeish and Sara Scott, DMSS Research. Second edition, February 2023
- 4 Harmful Sexual Behaviour Framework, 2nd Ed. 2019, NSPCC, UK. <https://www.icmec.org/wp-content/uploads/2019/04/harmful-sexual-behaviour-framework.pdf>
- 5 Support Matters: The landscape of child sexual abuse support services in England and Wales. Appendix 3. <https://www.csacentre.org.uk/app/uploads/2024/01/Support-Matters-full-report.pdf>
- 6 <https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/publications-log/criminal-justice/2023/child-gravity-matrix-v2.2---september-2023.pdf>
- 7 Lammy review: final report. An independent review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system. 2017. <https://www.gov.uk/government/publications/lammy-review-final-report>
- 8 Case Management Advice - <https://www.gov.uk/guidance/case-management-guidance/how-to-use-out-of-court-disposals#:~:text=The%20term%20out%2Dof%2Dcourt,made%20through%20a%20court%20process.>
- 9 [NPCC Guidance on Outcome 22 – an Alternative to a Out of Court Disposal \(yjlc.uk\)](https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/publications-log/criminal-justice/2023/child-gravity-matrix-v2.2---september-2023.pdf)
- 10 Be Safe Annual report. 2023-24
- 11 Keeping Safe: An analysis of the outcomes of work with sexually exploited young people in Wales. Hackett at al. 2019
- 12 Allotey, J. (2024). 'It's my normal': Exploration of adversity, attachment disruption, and trauma in adolescents who have displayed harmful sexual behaviours. Doctoral Thesis, University of Nottingham.
- 13 Key messages from research on children and young people who display harmful sexual behaviour Di McNeish and Sara Scott, DMSS Research Second edition, February 2023. <https://www.csacentre.org.uk/app/uploads/2023/02/Key-messages-from-research-Harmful-sexual-behaviour-2nd-edition-ENGLISH.pdf>
- 14 [\[Victims' Right to Review Scheme | The Crown Prosecution Service \(cps.gov.uk\)\]](https://www.cps.gov.uk/victims-right-to-review-scheme)
- 15 Child sexual abuse in 2022/23: Trends in Official Data (CSA Centre)
- 16 Measuring the scale and changing nature of child sexual abuse and child sexual exploitation Scoping report Professor Liz Kelly and Kairika Karsna July 2017, updated August 2018
- 17 CPS Pre-trial Therapy Guidance <https://www.cps.gov.uk/legal-guidance/pre-trial-therapy>

- 18 When adults or organisations make decisions, which affect children they must always think first about what would be best for the child (Article 3). Children have the right to say what they think about anything which affects them. What they say must be listened to carefully (Article 12). Governments must do everything they can to help child victims to recover from hurt. Sometimes it is their bodies that have been hurt and sometimes it is their minds (Article 39).'
- 19 <https://volume.lboro.ac.uk/child-first-justice/>
- 20 https://yjresourcehub.uk/wp-content/uploads/media/Child_First_Overview_and_Guide_April_2022_YJB.pdf
- 21 <child-gravity-matrix-v2.2---september-2023.pdf> (npcc.police.uk)
- 22 <Microsoft Word - profesor coding guidelines NOVEMBER 2017.docx>
- 23 Stop It Now helpline <https://www.stopitnow.org.uk/>
- 24 <kbsp-harmful-sexual-behaviour-guidance.pdf> (bristolsafeguarding.org)
- 25 <kbsp-hsb-strategy-discussion-aide-memoir-july-2022.pdf> (bristolsafeguarding.org)
- 26 <https://learning.nspcc.org.uk/child-protection-system/gillick-competence-fraser-guidelines>
- 27 <https://www.nhs.uk/conditions/consent-to-treatment/children/>
- 28 Case management guidance. Youth Justice Board for England and Wales. January 2024.

