

CONSENT - SEXUAL OFFENCES

What is Consent?

A child under the age of 13 can never consent to any sexual activity.

The age of consent is 16.

Sexual intercourse without consent is rape.

KCSIE explains consent in this way:

“Consent is about having the freedom and capacity to choose. Consent to sexual activity may be given to one sort of sexual activity but not another, e.g. to vaginal but not anal sex or penetration with conditions, such as wearing a condom. Consent can be withdrawn at any time during sexual activity and each time activity occurs. Someone consents to vaginal, anal or oral penetration only if s/he agrees by choice to that penetration and has the freedom and capacity to make that choice.”

Statutory definition of consent.

The statutory definition of consent is found in Section 74 Sexual Offences Act 2003 which defines consent as:

“If he agrees by choice, and has the freedom and capacity to make that choice”.

This should be considered in two stages:

- Whether a complainant had the capacity (i.e. the age and understanding) to make a choice about whether or not to take part in the sexual activity at the time in question.
- Whether he or she was in a position to make that choice freely; and was not constrained in any way.

Assuming that the complainant had both the freedom - and capacity - to consent, the crucial question is whether the complainant agrees to the activity by choice.

What is a reasonable belief in consent?

When deciding this, the courts will direct juries to look at all the circumstances, including any steps the alleged perpetrator had taken to ascertain whether the alleged victim had consented. It is likely that this will include a suspect's attributes, such as disability or extreme youth, but not if they had any particular fetishes.

The test is then:

Did the suspect genuinely believe the complainant consented?

This relates to their personal capacity to evaluate consent (the subjective element of the test).

If so, did the suspect reasonably believe it?

It will be for a jury to decide if the belief was reasonable (the objective element).

It is also useful to explain the following when teaching about consent:

- There is no requirement for an alleged victim to communicate lack of consent.
- A complainant does not consent if they are incapacitated through drink.
- A complainant does not need to be unconscious through drink to lose their capacity to consent.

Consent and penetration as a continuing act.

A victim can withdraw consent at any point. Just because someone consents at the outset does not mean they consent through the whole activity.

Consent to serious harm for sexual gratification.

A person is unable to consent to the infliction of harm that results in ABH or other more serious injury, for the purposes of obtaining sexual gratification: s.71 Domestic Abuse Act 2021

The Crown Prosecution Service have useful information on their website about sexual offences and there is further detailed information around all types of sexual offences:

<https://rightsofwomen.org.uk/wp-content/uploads/2014/10/Understand-Identify-Intervene-supporting-young-people-in-relation-to-peer-on-peer-abuse-domestic-and-sexual-violence.pdf>

Teaching resources

Home Office's 'disrespect nobody' and 'something's not right' campaigns

<https://www.gov.uk/government/collections/disrespect-nobody-campaign>

Alice Ruggles Trust's relationship safety resources

<https://www.alicerugglestrust.org/relationship-safety-resource>

PSHE Association

<https://pshe-association.org.uk/searchqueryTerm=Managing%20Healthy%20and%20Unhealthy%20Relationship%20Behaviours>

<https://pshe-association.org.uk/resource/working-out-relationships>

The following resources are directly useful

<https://www.saferinternet.org.uk/advice-centre/teachers-and-school-staff>
[https://www.childnet.com/resources/just-a-](https://www.childnet.com/resources/just-a-joke?utm_medium=email&utm_campaign=Project%20deSHAME%20Launch%20Event%20-)

[joke?utm_medium=email&utm_campaign=Project%20deSHAME%20Launch%20Event%20-](https://www.childnet.com/resources/just-a-joke?utm_medium=email&utm_campaign=Project%20deSHAME%20Launch%20Event%20-)

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