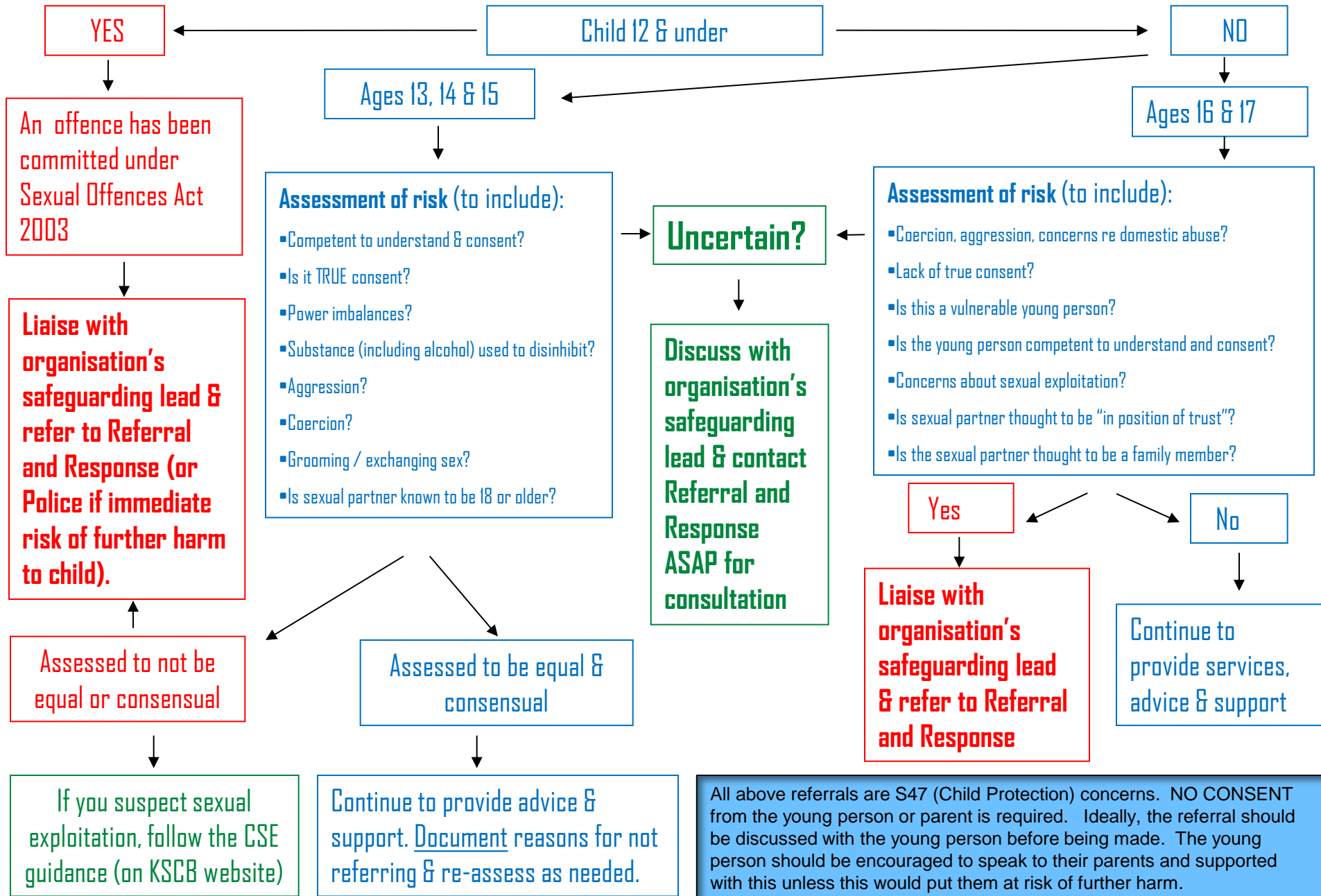


Guidance for professionals responding to under 18's who are sexually active

(use in conjunction with written guidance document)



Gillick Competency & Fraser Guidelines

Gillick competency and Fraser guidelines refer to a legal case which looked specifically at whether doctors should be able to give contraceptive advice or treatment to under 16-year-olds without parental consent. But since then, they have been more widely used to help assess whether a child has the maturity to make their own decisions and to understand the implications of those decisions. In 1982 Mrs Victoria Gillick took her local health authority (West Norfolk and Wisbech Area Health Authority) and the Department of Health and Social Security to court in an attempt to stop doctors from giving contraceptive advice or treatment to under 16-year-olds without parental consent.

The case went to the High Court where Mr Justice Woolf dismissed Mrs Gillick's claims. The Court of Appeal reversed this decision, but in 1985 it went to the House of Lords and the Law Lords (Lord Scarman, Lord Fraser and Lord Bridge) ruled in favour of the original judgement delivered by Mr Justice Woolf: "...whether or not a child is capable of giving the necessary consent will depend on the child's maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed, so the consent, if given, can be properly and fairly described as true consent."

Fraser Guidelines applied

The Fraser guidelines refer to the guidelines set out by Lord Fraser in his judgement of the Gillick case in the House of Lords (1985), which apply specifically to contraceptive advice: "...a doctor could proceed to give advice and treatment provided he is satisfied in the following criteria:

- 1) that the girl (although under the age of 16 years of age) will understand his advice;
- 2) that he cannot persuade her to inform her parents or to allow him to inform the parents that she is seeking contraceptive advice;
- 3) that she is very likely to continue having sexual intercourse with or without contraceptive treatment;
- 4) that unless she receives contraceptive advice or treatment her physical or mental health or both are likely to suffer;
- 5) that her best interests require him to give her contraceptive advice, treatment or both without the parental consent."

How is Gillick competency assessed?

Lord Scarman's comments in his judgement of the Gillick case in the House of Lords (1985) are often referred to as the test of "Gillick competency": "...it is not enough that she should understand the nature of the advice which is being given: she must also have a sufficient maturity to understand what is involved." He also commented more generally on parents' versus children's rights: "Parental right yields to the child's right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision."