

Sex, Disability and the Law

The Legal Age for Sex is 16 for both gay and heterosexual people. “Sex” means penetrative sex, oral sex or masturbating together, but the definition of sexual assault in criminal law also covers any touching which could be regarded as sexual. Many young people in Britain behave in ways regarded as sexual below the age of consent, and so technically risk prosecution. Some policy seems to be to encourage safer sex and contraception rather than condemnation, unless one of the partners is much older than 16. Police do sometimes prosecute youngsters for sexual activity, as some areas/forces have a more restrictive policy, depending upon CPS lawyers.

Sexual Discrimination is illegal. The Equality Act 2010 protects all those who have a “protected characteristic” including orientation, which includes lesbians, gays, bisexuals and transsexuals. Trans is defined as people suffering from gender dysphoria, diagnosed as such, and either starting — or planning to start — treatment for same. The Act does not include transvestites or people who are intersex (born with both or no gender / sex organs).

Discrimination against Disabled People is illegal. This means that you must treat disabled people in the same manner as others and provide them with the same opportunities, including making reasonable adjustments to allow them to be treated equally. It over-rides any law which stops disabled people enjoying the same privileges as other people.

Abusing your Position of Trust It is illegal for someone to have sex with a person over whom they are in a “position of trust”, even where there is consent and both parties are over 16. This includes teachers of those under 18, carers and doctors, who people trust to look after them. This law currently even includes people with learning and mental health difficulties who become mentors for their peers.

Touching Clients Consent is quite a complicated concept, legally speaking. Generally, clients should not be touched without their consent, since to do so could be a battery (often referred to as an assault). But there are situations in which the law implies that people generally consent, such as touching someone to gain their attention, or to reassure or support them. There are also situations where it is not possible or practical to obtain consent, such as emergencies. Qualified medical and nursing professionals may touch their patients within these boundaries but not in a sexual way. When restrictions are not adhered to, those who breach them may be convicted of criminal offences.

Consent Not everyone has the capacity to consent. With a client who may not have this capacity, an assessment should be made as to whether the sexual expression in question is in the best interests of the client, with documentation to prove their best interest has been carefully considered by those professionals involved. Capacity can often vary over time, and should be re-assessed regularly. Guidance can be found at www.guardianship.gov.uk If a person does have capacity to consent, and does consent to sexual activity, then their right to sexual expression and to consensual sex (both in private) should not be restricted.

Female Genital Mutilation (FGM) is illegal and a serious crime. It is sexual abuse of a child which must be reported. Anyone with information about children at risk of FGM, people believed to be carrying out female genital mutilation, or any information relating to offences of female genital mutilation must call 020 7161 2888 and Crimestoppers (can be anonymous) on 0800 555 111.

Forced Marriages are illegal. People with learning disabilities and children are forced into marriage through harassment, trickery, assault, kidnapping and blackmail. The forced marriage is also often a precursor to domestic violence including rape. The motives behind forcing people with learning disabilities to marry include an effort to find a carer, a means of obtaining a visa and a belief that marriage will “cure” learning disabilities. The charity Respond is campaigning to bring forced marriage to wider public attention and to improve official responses to it.

Sex Work is legal. Both the buying and selling of sex are, and always have been legal in Britain. It is legal for PAs and care staff to order an established, professional sex worker on behalf of a client who is unable to do so on their own because they cannot speak or write. There are many laws controlling the selling of sex: brothels are illegal although massage parlours and saunas are not, unless they are merely fronts for brothels; soliciting on the street is illegal, as is kerb crawling; it is also illegal to pay for sex with a sex worker who has been trafficked.