

# PENRICE ACADEMY

## SEXTING POLICY

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### Introduction

Sharing photos and videos online is part of daily life for many people, enabling them to share their experiences, connect with friends and record their lives. Photos and videos can be shared as text messages, email, posted on social media or increasingly via mobile messaging apps, such as Snapchat, WhatsApp or Facebook Messenger.

Sexting is a relatively recent phenomenon. However, with the growth of mobile phone ownership among young people, there has been an increase in the number of young people sharing and receiving images. Statistics from the children's charity Beatbullying suggest the following:

- Over one third (38%) had received a sexually explicit text or email – 36% of males and 39% of females
- Over a quarter (25%) had received an offensive sexual image
- 85% knew the identity of the aggressor
- The majority were peers and only 2% indicated that it was an adult
- Just under a third (29%) have been chatting online when someone started to talk to them about sexual things
- 6% had received a message or image on the subject of sex which subsequently made them feel uncomfortable or upset
- Over half of teachers (54%) were aware of pupils creating and sharing sexually explicit messages and images via the internet or mobile

More recent qualitative research from the NSPCC suggests that sexting reinforces some of the negative social stereotypes about the relationships between boys and girls. Boys gain kudos from having sexually provocative images of girls on their phones whereas the same is not true for girls.

Young people often do not anticipate the implications and consequences of sharing things online as they would offline - there is a disconnect between the two. The consequences of sexting can be devastating for young people. In extreme cases it can result in suicide or a criminal record, isolation and vulnerability.

Because of the prevalence of sexting, young people are not always aware that their actions are illegal. In fact, sexting as a term is not something that is recognised by young people and the 'cultural norms' for adults can be somewhat different. However, in the context of the law it is an illegal activity and young people must be made aware of this.

## **Aims**

This advice aims to support staff by clarifying procedures for responding to incidents involving sexting. It also signposts to sources of resources and support. These procedures are part of Penrice Academy's safeguarding arrangements and all incidents of sexting should be dealt with as safeguarding concerns. The response to these incidents should be guided by the principle of proportionality and the primary concern at all times should be the welfare and protection of the young people involved.

- Build upon and strengthen the knowledge and skills of staff in understanding and responding appropriately to incidents of sexting.
- Develop and maintain the quality of support, advice and guidance offered to young people involved in incidents of sexting.
- Ensure consistency of response across all school staff
- To provide support to staff dealing with incidents of sexting.
- To provide support to students involved in incidents of sexting and their peers and parents/carers

## **Definition of Sexting**

There are a number of definitions of sexting but for the purposes of this advice sexting is simply defined as:

Images or videos generated

- by children under the age of 18, or
- of children under the age of 18 that are of a sexual nature or are indecent.

These images are shared between young people and/or adults via a mobile phone, handheld device or website with people they may not even know.

There are many different types of sexting and it is likely that no two cases will be the same. It is necessary to carefully consider each case on its own merit. However, it is important that all staff apply a consistent approach when dealing with an incident to help protect themselves, the school and the student. The range of contributory factors in each case also needs to be considered in order to determine an appropriate and proportionate response.

A recent report by the Child Exploitation and Online Protection Centre (CEOP), (Threat Assessment of Child Sexual Exploitation and Abuse – June 2012), highlighted the following platforms as a place where young people are likely to share these images:

- Live one-to-one video chat on web sites
- Video chat via instant messaging applications
- Files sent by email to another person
- Files uploaded to public video hosting web sites
- Files being sent as attachments during online chat sessions
- Files used as profile images or posted on social networking sites

### **The law**

Making, possessing and distributing any imagery of someone under 18 which is 'indecent' is illegal. This includes imagery of yourself if you are under 18. The relevant legislation is contained in the Protection of Children Act 1978 (England and Wales) as amended in the Sexual Offences Act 2003 (England and Wales). Under this legislation it is a crime to:

- take an indecent photograph or allow an indecent photograph to be taken;
  - make an indecent photograph (this includes downloading or opening an image that has been sent via email);
  - distribute or show such an image;
  - possess with the intention of distributing images;
  - advertise; and
  - possess such images.
- The Sexual Offences Act 2003 (England and Wales) defines a child, for the purposes of indecent images, as anyone under the age of 18.

'Indecent' is not defined in legislation. When cases are prosecuted, the question of whether any photograph of a child is indecent is for a jury, magistrate or District Judge to decide based on what is the recognised standard of propriety. For most purposes, if imagery contains a naked young person, a topless girl, and/ or displays genitals or sex acts, including masturbation, then it will be considered indecent. Indecent images may also include overtly sexual images of young people in their underwear.

### **The police response**

The National Police Chiefs Council (NPCC) has made clear that incidents involving youth produced sexual imagery should primarily be treated as safeguarding issues. Schools may respond to incidents without involving the police. The police may, however, need to be involved in cases to ensure thorough investigation including collection of all evidence (for example, through multi-agency checks), and there are incidents which should always be referred to the police. Even when the police are involved, however, a criminal justice response and formal sanction against a young person would only be considered proportionate in certain circumstances.

However, there are cases in which children and young people have been convicted and sent to prison. Whilst the Designated Safeguarding Lead (DSL) will want to consider the implications of passing an incident over to the police, it is not the responsibility of school staff to make decisions about the seriousness of the matter. Clearly, if it is a case that involves an adult, the process and potential outcome will be very different. Essentially, though, sexting is classed as illegal as it constitutes sharing and/or possessing an indecent image of a child.

### **Initial response**

All incidents involving youth produced sexual imagery should be responded to in line with the school's safeguarding and child protection policy. When an incident involving youth produced sexual imagery comes to a school or college's attention:

- The incident should be referred to the DSL or in their absence, Deputy DSL, as soon as possible.
- There should be subsequent interviews with the young people involved (if appropriate).
- Parents should be informed at an early stage and involved in the process unless there is good reason to believe that involving parents would put the young person at risk of harm.
- At any point in the process if there is a concern a young person has been harmed or is at risk of harm a referral should be made to children's social care and/or the police immediately.

Students need to be made aware that **staff cannot promise confidentiality, even if a child or young person asks them not to share the information.**

**Any member of staff who is aware of an incident of sexting should consult the DSL, or a member of the Safeguarding Team.**

### **Action taken by the DSL/Deputy DSL a referral of sexting**

The DSL, in consultation with the deputy DSL, will aim to establish:

- Whether there is an immediate risk to a young person or young people
- If a referral should be made to the police and/or children's social care
- If it is necessary to view the imagery in order to safeguard the young person – in most cases, imagery should not be viewed
- What further information is required to decide on the best response
- Whether the imagery has been shared widely and via what services and/or platforms. This may be unknown.

- Whether immediate action should be taken to delete or remove images from devices or online
- Any relevant facts about the young people involved which would influence risk assessment
- If there is a need to contact another school, college, setting or individual
- Whether to contact parents or carers of the pupils involved - in most cases parents should be involved

**If the image has been shared across a personal mobile device:**

The DSL or Deputy DSL can make the decision to confiscate and secure the device(s).

Staff should **never**:

- View the image unless there is a clear reason to do so
- Send, share or save the image anywhere
- Allow students to do any of the above

**An immediate referral to police and/or children's social care should be made if at this initial stage:**

1. The incident involves an adult
2. Staff have reason to believe that a young person has been coerced, blackmailed or groomed, or if there are concerns about their capacity to consent (for example owing to special educational needs)
3. What staff know about the imagery suggests the content depicts sexual acts which are unusual for the young person's developmental stage, or are violent
4. The imagery involves sexual acts and any pupil in the imagery is under 13
5. Staff have reason to believe a pupil or pupil is at immediate risk of harm owing to the sharing of the imagery, for example, the young person is presenting as suicidal or self-harming

If none of the above apply, then the DSL or Deputy DSL may decide to respond to the incident without involving the police or children's social care; (school can choose to escalate the incident at any time if further information/concerns come to light).

The decision to respond to the incident without involving the police or children's social care can be made in cases when the DSL or Deputy DSL are confident that they have enough information to assess the risks to pupils involved and the risks can be managed within the school's pastoral support and disciplinary framework and if appropriate local network of support.

The decision should be made by the DSL with input from the Deputy DSL and safeguarding team if appropriate. The decision should be recorded on CPOMS on the incident log. The decision should be in line with the academy's child protection procedures and should be based on consideration of the best interests of the young

people involved. This should take into account proportionality as well as the welfare and protection of the young people. The decision should be reviewed throughout the process of responding to the incident.

**When assessing the risks, the following should be considered (Refer to Annex A for further details):**

- **the age and the developmental appropriateness of their actions:** is the activity appropriate for their age group or is it extreme behaviour? Teenagers will experiment – but what about a younger child? Are you concerned that the behaviour is outside the norms?
- **their background or context:** have they suffered abuse? Are they a looked after child or a vulnerable child? Have they been involved in the criminal justice system? Could their actions have been influenced by the behaviour of influential adults? Does the young person understand consent? Has the young person taken part in this kind of activity before?
- **whether the child was willing or coerced:** were they subjected to sexual coercion or bullying, or was the incident willingly entered into? Were adults involved?
- **the nature of image that was shared:** how provocative or explicit was it? Does it break the law, i.e. is it a child sex abuse image?
- **the level of dissemination:** how widely was the image shared and with whom? How was it passed around?
- **participant intent/motive:** was it simply a 'romantic' gesture? Or was there intent to harm another? What other motive might there be? Was there sexual attention seeking?
- **the wellbeing of those involved:** depending on the answers to some of the questions above, you should risk-assess the situation in order to work out whether you need to escalate the issue to protect those involved.
- **whether protection, education or counselling is required** related to the level of risk. Does what may be a silly juvenile incident warrant a criminal record?
- **urgency and timing:** again relevant to the level of risk - for example, an incident taking place last thing on a Friday may escalate over the weekend
- **involvement of other schools:** do you need to contact the senior management team at another school if the sexting involves, or has disseminated to, pupils there?
- **Are there any adults involved in the sharing of imagery?**

### **Younger children**

Children under 13 are given extra protection from sexual abuse under the Sexual Offences Act 2003. This law makes it clear that sexual activity with a child under 13 is

never acceptable, and that children of this age can never legally give consent to engage in sexual activity. This applies to children who have not yet reached their 13th birthday i.e. children who are aged 12 and under. Any situations involving children under 13 and youth produced sexual imagery must be taken seriously as potentially being indicative of a wider safeguarding or child protection concern or as being problematic sexual behaviour. Any imagery containing sexual activity by under 13s should be referred to the police.

In some cases, children under 13 (and indeed older) may create youth produced sexual imagery as a result of age appropriate curiosity or risk-taking behaviour or simply due to naivety rather than any sexual intent. Some common examples could include sending pictures of their genitals to their friends as a dare or taking a photo of another child whilst getting changed for PE. Within this context it is unlikely that police or Social Care involvement is required or proportionate but the DSL will need to use their professional judgement to consider the specific context and the children involved.

Being older can give someone power in a relationship so if there is a significant age difference it may indicate the young person felt under pressure to take the image/video or share it. Consideration should also be given to a young person's level of maturity and the impact of any special educational needs on their understanding of the situation. If there is reason for staff to believe the imagery contains acts which you would not expect a young person of that age to engage in, then the DSL will refer to the police.

### **Reporting incidents to the police**

If it is necessary to refer to the police, contact will be made by dialling 101. Once a report is made to the police, the report has to be recorded and the police will conduct an investigation. This may include seizure of devices and interviews with the young people involved.

As a general rule it will almost always be proportionate to refer any incident involving "aggravated" sharing of images to the police, whereas purely "experimental" conduct may proportionately be dealt with without such referral, most particularly if it involves the child sharing images of themselves.

Any conduct involving, or possibly involving, the knowledge or participation of adults should always be referred to the police.

If an "experimental" incident is not referred to the police, the reasons for this should be recorded in writing.

### **Viewing the imagery**

Staff, or any adults should not view youth produced sexual imagery unless there is good and clear reason to do so. Parents and carers should always be advised not to

view youth produced sexual imagery but instead to report an incident of concern to the police through 101.

Wherever possible responses to incidents should be based on what staff have been told about the content of the imagery.

The decision to view imagery should be based on the professional judgement of the DSL. Imagery should never be viewed if the act of viewing will cause significant distress or harm to the pupil.

If a decision is made to view imagery the DSL would need to be satisfied that viewing:

- is the only way to make a decision about whether to involve other agencies (i.e. it is not possible to establish the facts from the young people involved)
- is necessary to report the image to a website, app or suitable reporting agency to have it taken down, or to support the young person or parent in making a report
- is unavoidable because a pupil has presented an image directly to a staff member or the imagery has been found on a school device or network

If youth produced sexual imagery has been unavoidably viewed by a member of staff either following a disclosure from a young person or as a result of a member of staff undertaking their daily role (such as IT staff monitoring school systems) then the DSL or Deputy DSL should ensure that the staff member is provided with appropriate support. Viewing youth produced sexual imagery can be distressing for both young people and adults and appropriate emotional support may be required.

**When searching a mobile device, the following conditions should apply:**

- The action is in accordance with the school's child protection and safeguarding policies.
- Ensure viewing is undertaken by the DSL or Deputy DSL or a member of the Safeguarding team with delegated authority from the DSL.
- Ensure viewing takes place with another member of staff present in the room, ideally the DSL or Deputy DSL, or a member of the Safeguarding team. This staff member does not need to view the images.
- Wherever possible ensure viewing takes place on school or college premises, ideally in the Safeguarding office.
- Ensure wherever possible that images are viewed by a staff member of the same sex as the young person in the imagery.
- Record the viewing of the imagery on CPOMS, as files notes for the incident, including who was present, why the image was viewed and any subsequent actions.

Further details on searching, deleting and confiscating devices can be found in the DfE Searching, Screening and Confiscation advice.



If it is necessary to view the imagery, then the DSL or relevant member of staff should **never**:

- Search a mobile device even in response to an allegation or disclosure if this is likely to cause additional stress to the student/young person UNLESS there is clear evidence to suggest that there is an immediate problem
- Print out any material for evidence
- Move any material from one storage device to another

Always put the child first. Do not search the device if this will cause additional stress to the student/ person whose image has been distributed.

### **Support for students**

If necessary students and families can be referred to support which can include the following:

- Allocation of a key worker in the Safeguarding team.
- Bespoke online safety and PSHE work.
- Online safety literature.
- Referral to relevant outside agencies, eg, Early Help Hub.
- Support from Student & Family Centre staff.
- Referral to Academy Counsellor.

## **Annex A**

When deciding whether to involve the police and/or children's social care, consideration should be given to the following questions. Answering these questions will support the DSL in considering whether a young person is at risk of harm, in which case a referral will be appropriate, whether additional information or support is needed from other agencies or whether the school can manage the incident and support the young people directly.

### **Do you have any concerns about the young person's vulnerability?**

- Consideration should be given to whether a young person's circumstances or background makes them additionally vulnerable. This could include being in care, having special educational needs or disability or having been a victim of abuse.
- Where there are wider concerns about the care and welfare of a young person then consideration should be given to referring to children's social care.

### **Why was the imagery shared? Was it consensual or was the young person put under pressure or coerced?**

- Young people's motivations for sharing sexual imagery include flirting, developing trust in a romantic relationship, seeking attention or as a joke.
- Though there are clearly risks when young people share imagery consensually, young people who have been pressured to share imagery are more likely to report negative consequences.
- A referral should be made to the police if a young person has been pressured or coerced into sharing an image, or imagery is being shared without consent and with malicious intent.
- Consideration should also be given to a young person's level of maturity and the impact of any special educational needs on their understanding of the situation.
- You should take disciplinary action against pupils who pressure or coerce others into sharing sexual imagery. If this is part of pattern of behaviour then you should consider making a referral to a Harmful Sexual Behaviour service

### **Has the imagery been shared beyond its intended recipient? Was it shared without the consent of the young person who produced the imagery?**

- The imagery may have been shared initially with consent but then passed on to others. A pupil may have shared the image further with malicious intent, or they may not have had a full understanding of the potential consequences.
- Consideration should also be given to a young person's level of maturity and the impact of any special educational needs on their understanding of the situation.
- The police should be informed if there was a deliberate intent to cause harm by sharing the imagery or if the imagery has been used to bully or blackmail a pupil.

### **Has the imagery been shared on social media or anywhere else online? If so, what steps have been taken to contain the spread of the imagery?**

- If the image has been shared widely on social media, this could cause significant embarrassment for the pupil and have a long term impact on their online reputation. It could also increase the risk of them being bullied or contacted by strangers online.
- You should support a young person to report the imagery to any sites it is hosted on. If the young person has tried to report the imagery and it has not been removed the young person should contact ChildLine who work in partnership with the Internet Watch Foundation (IWF) to have youth produced imagery removed from the internet. You could also contact the Professionals Online Safety Helpline for advice and support.
- If the young person is being contacted by people they don't know who have viewed the image then you should report to NCA-CEOP.

#### **How old is the young person or young people involved?**

- Children under the age of 13 are unable to consent to sexual activity. Any imagery containing sexual activity by under 13s should be referred to the police.
- Being older can give someone power in a relationship so if there is a significant age difference it may indicate the young person felt under pressure to take the image/video or share it.
- Consideration should also be given to a young person's level of maturity and the impact of any special educational needs on their understanding of the situation.
- If you believe the imagery contains acts which you would not expect a young person of that age to engage in then you should refer to the police. The Brook Traffic Light tool provides guidance on harmful sexual behaviour at different ages.

#### **Did the young person send the image to more than one person?**

- If a pupil is sharing sexual imagery with multiple people this may indicate that there are other issues which they need support with. Consideration should be given to their motivations for sharing.
- If you believe there are wider safeguarding concerns then you should make a referral to children's social care.

#### **Does the young person understand the possible implications of sharing the image?**

- Young people may produce or share imagery without fully understanding the consequences of what they are doing. They may not, for example, understand how it may put them at risk or cause harm to another young person. They may also not understand consent.
- Exploring their understanding may help you plan an appropriate response helping you assess, for example, whether they passed on an image with deliberate intent to harm.

#### **Are there additional concerns if the parents or carers are informed?**

- Parents should be informed of incidents of this nature unless there is good reason to believe that informing them will put the young person at risk. This may be due to concerns about parental abuse or cultural or religious factors which would affect how they or their community would respond.
- If a young person highlights concerns about involvement of their parents then the DSL should use their professional judgement about whether it is appropriate to involve them and at what stage. If a school chooses not to involve a parent they must clearly record the reasons for not doing so. Where possible young people should be supported to speak with their parents themselves about the concerns.

