

Friendships, sexual relationships and marriage

Mencap WISE Student Advice Project

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Introduction

Social interaction is a key part of everyone's life. We are all equally entitled to experience different relationships. However, people with a learning disability may encounter barriers and discrimination when forming relationships.

The purpose of this toolkit is to assist people who are acting as learning disability advocates (be that parent, carer, volunteer or professional) by explaining the law relating to friendships, sexual relationships and marriage. The toolkit has been prepared as part of the Mencap WISE project, funded by the Welsh Government. Therefore, it focuses on the law and procedure applicable in Wales. The toolkit is divided into three Parts:

Part 1 - Friendships

- **Why are friendships important?**
- **The Social Services and Well-being (Wales) Act 2014**
- **What types of services can be provided?**
- **Accessing online services safely**

Part 2 – Sexual Relationships

- **The law relating to consent and capacity**
- **Key issues: sexual health and contraception, LGBT rights, accessing pornography and sex workers**
- **Safeguarding considerations**

Part 3 – Marriage and enduring relationships

- **Marriage and civil partnerships – the legal requirements**
- **Common law marriage**
- **Ending a relationship**
- **Sorting out property and finances**
- **Domestic abuse**
- **Getting legal advice**

The toolkit includes hyperlinks to key online resources. Wherever a reference is underlined in the text, it indicates that it is a hyperlink, which will take you to the relevant external resource. In addition, each Part of the toolkit concludes with an *Additional Resources* section, which contains details of organisations providing relevant information and services.

Part 1 - Friendships

Most people with a learning disability say friendships and relationships are important to them. However, people with disabilities often find themselves socially isolated, and so it can be difficult to make friends and to maintain friendships. Part 1 of the toolkit considers why promoting meaningful relationships is important, and provides information about the support services that are available to help people with disabilities engage in friendships.

Part 1 is divided into five sections:

- ❖ **Why are friendships important?**
- ❖ **The Social Services and Well-being (Wales) Act 2014**
- ❖ **What types of services can be provided?**
- ❖ **Accessing online services safely**

A list of **Additional Resources (for Part 1)** is also included.

Why are friendships important?

Mencap research has established that friendships and socialising are important to people with a learning disability for a number of reasons, including:

- friendships encourage confidence and independence;
- friendships reduce loneliness;
- friendships improve general well-being.

In addition, better social integration can also help to improve social attitudes towards learning disability.

Loneliness is a particularly significant problem as it is linked to a number of health risks, including depression. Research by **Sense UK**, looking at loneliness and isolation amongst disabled people found that:

- 6% of disabled people have no friends at all;

- 53% report feeling lonely (rising to 77% for young disabled people, aged between 18 - 34);
- 23% say they feel quite or very lonely on a typical day;
- 53% feel that as a disabled person there are more barriers to making and keeping friends (again rising to 77% for young people); and
- 23% say that changes to welfare benefits and eligibility for social care have made it harder to make and sustain friendships.

Therefore, the clear message is that friendships are hugely beneficial to people with disabilities. However, the research has also shown that there are a number of barriers that prevent people with disabilities forming social relationships, particularly:

- lack of accessible activities;
- lack of support;
- lack of accessible information; and
- affordability.

The rest of Part 1 will, therefore, explore ways in which disabled people can access information and services to help support social relationships. (If you are supporting someone who is experiencing difficulty accessing a particular service, you may also find it useful to look at the separate toolkit relating to **Accessing Leisure Services**, which is available on the Mencap Cymru website.)

The Social Services and Well-being (Wales) Act 2014

There is no specific law that entitles people to social relationships, but individuals living in Wales have rights under the Social Services and Well-Being (Wales) Act 2014 (SSWBA 2014). The legislation provides a legal framework for transforming social care services and improving the well-being of people in Wales, both adults and children.

Detailed information about the SSWBA 2014, including how to obtain an assessment of care and support needs for someone that you are supporting, is contained in the separate **Accessing health and social care services**

toolkit on the Mencap Cymru website. In summary, the legislation requires local authorities to promote the well-being of:

- people who need care and support, and
- carers who need support.

Well-being is defined in s2 SSWBA 2014, and means any of the following:

- physical and mental health and emotional well-being;
- protection from abuse and neglect;
- education, training and recreation;
- domestic, family and personal relationships;
- contribution made to society;
- securing rights and entitlements;
- social and economic well-being; and
- suitability of living accommodation.

The SSWBA 2014 is supported by a number of Codes of Practice, which explain the obligations that local authorities have under the legislation. The **Part 2 Code of Practice (General Functions)** provides more detail regarding what the concept of well-being means in practice, and sets out ‘well-being outcome statements’ for each element of the well-being definition. Several of the well-being outcome statements highlight the importance of personal relationships:

Definition of well-being	National well-being outcome statements
<p><i>Physical and mental health and emotional well-being</i></p> <p><i>Also for children: Physical, intellectual, emotional, social and behavioural development</i></p>	<p>I am healthy and active and do things to keep myself healthy</p> <p>I am happy and do the things that make me happy</p> <p>I get the right care and support, as early as possible</p>
<p><i>Education, training and recreation</i></p>	<p>I can learn and develop to my full potential</p> <p>I do the things that matter to me</p>

<i>Domestic, family and personal relationships</i>	I belong I contribute to and enjoy safe and healthy relationships
<i>Contribution made to society</i>	I engage and make a contribution to my community I feel valued in society
<i>Social and economic well-being</i>	I contribute towards my social life and can be with the people that I choose

When assessing care and support needs, local authorities in Wales must consider whether the person being assessed will be able to achieve their well-being outcomes. Whilst there is no legislation that applies specifically to friendships, the definition of well-being includes emotional well-being, and the well-being outcome statements refer to the importance of social relationships and integration. Therefore, any assessment must consider whether the person being assessed will be able to form positive relationships.

The importance of social relationships is also emphasised in the framework for assessing needs under the SSWBA 2014. Local authorities do not always have to meet every need that a person requiring care and support has. However, the **Part 4 Code of Practice (Meeting Needs)** (paragraph 27) notes that certain needs must always be considered by local authorities. These needs are set out in Regulation 3 of **The Care and Support (Eligibility) (Wales) Regulations 2015**, and include:

- involvement in work, education, learning or leisure activities;
- maintenance or development of family or other significant personal relationships;
- development and maintenance of social relationships and involvement in the community.

This means that needs relating to social relationships are eligible for care and support services.

What types of services can be provided?

When an assessment is being undertaken of a person's care and support needs, the SSWBA 2014 requires that both the person being assessed and their family/carers are fully involved in the assessment process. Therefore, it can be useful to have an understanding of the types of care and support services that are available to support social relationships, so that the assessment can explore whether they should form part of any care and support plan.

1) *Short breaks*

Short breaks are sometimes referred to as respite care, and usually involve care for the disabled person being provided by someone other than their usual carer(s).

Research by **Scope** has identified that short breaks can have benefits for both the disabled person and their carer, including:

- enabling people with disabilities to have new experiences and to make new friends;
- providing opportunities for people with disabilities to gain greater independence;
- giving carers a break from providing care and opportunities to rest.

Short breaks can be for a few hours a week, a few days a month or for a longer period, and cover a range of activities including:

- someone caring for or 'sitting with' a person in their own home, including overnight;
- supporting a person to take part in activities;
- a temporary stay in residential care;
- a holiday where the cared-for person's needs are supported.

If you are living in Wales and think that you or someone you support might benefit from a short break then the Dewis Cymru website contains information about accessing **short breaks for carers**, and there is also information about short break providers in the **Additional Resources (for Part 1)**.

2) *Well-being services*

If you are living in Wales and think that you or someone you support might benefit from engaging in supported activities to promote well-being, then the **Dewis Cymru** website contains information about the services available in Wales.

In addition, the Mencap **Local Groups Network** supports over 420 community organisations around the UK. Also, the **Additional Resources (for Part 1)** contains information about organisations in Wales offering a range of services to support disabled people in establishing social relationships.

Accessing online services safely

Many people undertake a lot of their social interaction via online activities. Whilst social media has many positives and allows people to engage in a range of different relationships, there are also a number of risks, including the potential for cyberbullying, risk of exposure to inappropriate content and online grooming. These risks exist for all people, but can be heightened where a person has a learning disability due to increased vulnerability and social naivety. For example, research has found that children with special educational needs are 12% more likely to have experienced cyberbullying than children without the same needs.

If you are supporting someone who uses, or wants to start using, the internet and social media, it will usually be sensible to talk to them about how to stay safe online, including:

- what it is and isn't OK to tell people about themselves;
- protecting themselves by using a nickname and avatar;
- the importance of using the internet sensibly and not becoming addicted to being online;
- the need to be polite and respectful when communicating with other people;
- being careful about opening attachments which come from people/sources they do not know;
- the importance of talking to you if people ask for personal information or if they experience any abusive behaviour.

NetSmartz produces a series of online safety tools to support children with learning disabilities, and you may also find some of the resources listed in the **Additional Resources (for Part 1)** useful if you are concerned about the online safety of a person that you are supporting.

Other practical steps that can be taken to help ensure online safety include:

- keeping computers in family rooms;
- installing safe browsers/internet filters;
- protecting against viruses; and
- minimising the risk of postural and vision problems.

Mencap has worked with neurodisability charity Cerebra to produce **Learning Disability, Autism and Internet Safety**, which is a guide to internet safety for parents and carers. Of course, internet access is not only available via home computers, with many people using internet enabled phones, tablets and gaming devices. ‘Learning Disability, Autism and Internet Safety’ also includes information on how to make the mobile internet safe.

If the person that you are supporting needs help to access online services, then you might find it useful to look at the **AbilityNet Factsheets**, which are free to download and provide advice and information about how computers and other digital technologies can help people with a range of disabilities.

Additional Resources (for Part 1)

The following websites contain useful information (*Ctrl + click to follow each link*):

Organisation	Website
<p>Cyberbullying (There are a number of online resources available which provide information and advice regarding how to deal with cyberbullying)</p>	<p>Anti-Bullying Alliance (a network of over 60 organisations working to reduce bullying, which includes resources relating to cyberbullying and bullying targeted at young people with disabilities): www.anti-bullyingalliance.org.uk/</p> <p>ChildLine (confidential counselling service for children and young people, which provides information and advice on a range of topics including cyberbullying and online safety): www.childline.org.uk/</p> <p>Family Lives (family support charity which hosts the Bullying UK advice service): www.familylives.org.uk/</p> <p>National Autistic Society (provides specialist advice for parents/carers supporting autistic children who experience bullying): www.autism.org.uk/about/in-education/bullying/guide-parents.aspx</p>
<p>Online safety (There are a number of online resources available which provide information and advice regarding how to keep safe online)</p>	<p>Childnet International (provides information and resources to enable young people to navigate the online environment safely and to support parents/carers to provide appropriate guidance): www.childnet.com/</p> <p>Connect Safely (international not for profit organisation providing information about online safety, privacy and security, including guidebooks on safe social networking): www.connectsafely.org/</p> <p>Thinkuknow (education programme from the National Crime Agency that enables children and young people to identify the risks they may face online, and provides resources for parents/carers): www.thinkuknow.co.uk/</p> <p>UK Safer Internet Centre (provides resources for young people, parents/carers and professionals to ensure that the internet is a safe place): www.saferinternet.org.uk/</p>

<p>Web communities <i>(Online communities for disabled people, parents and carers)</i></p>	<p>Talk about Autism <i>(the UK's largest online autism community):</i> www.ambitiousaboutautism.org.uk/talk-about-autism</p> <p>Wrong Planet <i>(web community relating to autism, Asperger's Syndrome and other neurological differences):</i> http://wrongplanet.net/about-wrong-planet/</p>
<p>Well-being Services and Short breaks <i>(These organisations provide short breaks and other services that enable people with disabilities to participate in social activities)</i></p>	<p>Cae Melyn, Welshpool <i>(care home for younger adults with learning disabilities, which also offers short breaks):</i> www.caemelyngrouphome.co.uk/</p> <p>Craig y Parc School, Cardiff <i>(residential and day school for disabled children and young people, which also provides short breaks via its residential centre - Ty Cwtch):</i> www.salutemhealthcareltd.com/craig-y-parc/</p> <p>Disabled Holidays <i>(company specialising in holidays for people with disabilities):</i> www.disabledholidays.com/about/learning-disability-holidays.html</p> <p>Priory Adult Care <i>(based in South Wales, provides a range of specialist residential and supported living services for adults with a learning disability):</i> www.prioryadultcare.co.uk/find-a-location/supporting-you-in-south-wales/</p> <p>Prospects <i>(based in Wrexham and North East Wales, provides a range of services for children and young people with complex needs, including short breaks):</i> http://prospectscare.co.uk/</p> <p>Stay Up Late <i>(charity committed to promoting the rights of people with learning disabilities to participate in social activities and live the lifestyle of their choosing):</i> https://stayuplate.org/</p>

Part 2 – Sexual Relationships

Everyone has the right to engage in a consensual sexual relationship. Part 2 of the toolkit will explore how best to support people with learning disabilities who want to enter into sexual relationships, and how to facilitate meaningful and safe relationships.

Part 2 is divided into three sections:

- **The law relating to consent and capacity**
- **Key issues: sexual health and contraception, LGBT rights, accessing pornography and sex workers**
- **Safeguarding considerations**

A list of **Additional Resources (for Part 2)** is also included.

The law relating to consent and capacity

In the UK, the age of consent to any form of sexual activity is 16, regardless of gender or sexual orientation. Consent means permission for something to happen or agreement to do something, and s74 of **Sexual Offences Act 2003** states that a person consents to a sexual act if “*he agrees by choice, and has the freedom and capacity to make that choice*”. This means that before someone can consent to a sexual relationship, they must be aged 16 or over and must have capacity to consent.

Capacity refers to whether a person has the ability to make decisions for themselves. Someone who does not have capacity cannot consent to a sexual relationship. The law relating to capacity is set out in the **Mental Capacity Act 2005** (MCA 2005). Under the MCA 2005, everyone aged 16 or over is presumed to have capacity to consent. However, s2 MCA 2005 states that a person will lack capacity if they:

- have an impairment or disturbance (for example, a disability, condition or trauma) that affects the way their mind or brain works; and

- the impairment or disturbance means that they are unable to make a specific decision at the time it needs to be made.

Under s3 MCA 2005, a person will be unable to make a decision if they cannot:

- *understand* information relevant to the decision;
- *retain* the information;
- *weigh up* the information as part of a decision-making process; or
- *communicate* the decision (whether this is by talking, using sign language or other means).

It does not matter whether the impairment or disturbance is temporary or permanent, although being able to retain information for a short period of time only will not usually prevent someone from being able to make a decision. Similarly, a person should not be considered unable to decide simply because of their age or appearance, or due to an aspect of their behaviour, or because their decision is considered unwise or eccentric by others. Capacity is also decision-specific, which means that a person could have capacity to make decisions about some issues but not others.

If you are supporting someone with a learning disability, who wishes to start a sexual relationship, then it is important that you talk to them about their expectations of the relationship and provide an opportunity for them to raise concerns and questions around sex. Some useful resources to help you are listed below (see [Sexual health and contraception](#) and [Additional Resources \(for Part 2\)](#)). However, if you believe that the person does not have capacity to consent to a sexual relationship then you should not encourage them to have sex, as it is a criminal offence to engage in a sexual act with someone who lacks capacity (see [Safeguarding considerations](#)). Similarly, whilst it is possible for family members and carers to make some decisions on behalf of a person who lacks capacity, s27 MCA 2005 states that it is not possible for anyone to consent to a sexual relationship on behalf of someone else.



Key Information and Resources:
Consent and Capacity

- ❖ A person aged under 16 cannot consent to a sexual relationship.
- ❖ A person aged 16 or over who has capacity to make their own decisions is able to consent to a sexual relationship.
- ❖ A person aged 16 or over who does not have capacity to make their own decisions cannot consent to a sexual relationship, and nobody is able to consent on the person's behalf.

Key issues: sexual health and contraception, LGBT rights, accessing pornography and sex workers

This section considers some of the key issues that can arise when supporting someone who wants to have a sexual relationship.

1) Sexual health and contraception

Under s8 **Family Law Reform Act 1969**, young people aged 16 or over can consent to surgical, medical and dental treatment. As with consent to sexual relationships, everyone aged 16 or over is presumed to have sufficient capacity to consent to medical treatment unless there is evidence to suggest otherwise.

If there is any doubt about whether the person has capacity, an assessment will be made applying the 'understand, retain, weigh-up and communicate' test under s3 MCA 2005 (see **The law relating to consent and capacity**). If the outcome of the assessment is that the person does not have capacity, then the health professionals, in conjunction with the person and their family/carers, will make a *best interests decision* about what medical treatment the person should receive. If the health professionals and family/carers cannot agree about what is in the person's best interests, then an application can be made to the Court of Protection and a judge will decide. (It is possible for a family member/carer to be appointed as a Personal Welfare Deputy by the Court of Protection. This allows the Deputy to make any

best interests decisions required, although appointments as Personal Welfare Deputies are quite rare.)

Young people under the age of 16 can consent to medical treatment provided they are able to fully understand what the treatment involves. This is known as being ‘Gillick competent’, and the health professionals working with the young person will usually make an assessment about whether the young person is able to consent. (The NSPCC produces a fact sheet explaining **Gillick competency**.) If a young person under 16 does not have capacity, someone with parental responsibility (usually their mother or father) can consent for them.

Generally, the same principles will apply if the issue is refusal of, rather than consent to, medical treatment. However, if a person aged under 18, who has capacity, refuses medical treatment, then an application can be made to the court for an order authorising the treatment to be carried out. The court will then decide what is in the young person’s best interests.

Anybody who seeks medical advice is usually entitled to confidentiality. This means that, even if the person who asks for advice does not have capacity, the health professional will not normally disclose the fact that the advice has been sought. However, if the health professional believes that the person seeking advice is at risk of being harmed, then there may be a safeguarding duty to disclose information depending upon the particular circumstances, such as the age of the person and whether they have capacity.



Key Information and Resources:
Sexual health and contraception

The key principles discussed in this section will be applied by health professionals if they are asked to provide advice and treatment relating to sexual relationships, and the position can be summarised as follows:

- ❖ Any person seeking advice and treatment from a health professional is entitled to confidentiality unless there are safeguarding issues that require confidentiality to be broken.
- ❖ Anyone aged 16 or over can consent to medical treatment provided they have capacity, and the starting point is that everyone aged 16 or over is presumed to have capacity unless there is evidence to suggest otherwise.
- ❖ A young person aged less than 16 can consent to medical treatment, provided the health professional is satisfied that the young person fully understands what the treatment involves.
- ❖ Therefore, anyone who is able to understand the advice/treatment being sought should be provided with confidential sexual health and contraception services. In situations where the health professional believes that the person seeking advice/treatment is not competent, advice/treatment will be withheld, although the fact that the person has sought advice/treatment will be kept confidential unless there are safeguarding issues.
- ❖ If the person seeking advice/treatment is competent but under 16, then advice/treatment can be provided even though the young person is below the age of consent, as the primary duty of health professionals is to protect the young person's health. However, the young person is likely to be advised to discuss the situation with their parent/guardian, and if safeguarding issues arise then the medical professional may decide to breach confidentiality.
- ❖ If the person seeking advice/treatment is competent but under 13, then advice/treatment can be provided to protect the young person's health.

However, the expectation is that the health professional will raise safeguarding issues as sexual activity in someone under the age of 13 will always be a cause for concern.

If you are supporting someone who has capacity to enter into a sexual relationship, and who wants to access advice regarding their sexual health, make sure that you provide space on a one-to-one basis for the person you support to raise concerns and questions. This applies whether you are a professional or a family member, and people who receive effective sex and relationships education usually have better sexual knowledge, better sexual health and reduced vulnerability to sexual abuse. You should think about how to tailor the conversation to the person you are supporting, and use resources to enable understanding (e.g. pictures can be good mechanisms to aid understanding of abstract concepts such as love). If the person you are supporting also has a physical disability, there may be additional issues to consider (e.g. people with Spina Bifida are allergic to latex and so require non-latex condoms and dental dams for safer sex), and the **Shaw Trust** provides information about products and services designed to make physical relationships easier.

Mencap has an online resource bank relating to **Relationships and Sex and Learning Disability**, which includes links to a range of accessible information about sexual relationships, and a variety of other resources are listed in the **Additional Resources (for Part 2)**.

2) LGBT rights

Just like anyone else, people with a learning disability can be lesbian, gay, bisexual and transgender (LGBT). Research by **The LGBT Health and Inclusion Project** found that people with learning disabilities, who are LGBT, can experience additional barriers when trying to access support, as learning disability services may not have awareness of LGBT issues, and LGBT support services may not have experience of learning disability. In order to help overcome these barriers, the research made a number of suggestions, including:

- Ensuring that accessible information is available for people with learning disabilities about LGBT identities and support.
- Increasing staff knowledge and understanding in both LGBT service provision and learning disability.

Sources of accessible information are available. For example, the **Secret loves, hidden lives?** research project produced an easy read report which looked at the lives of lesbian, gay and bisexual people with a learning disability, and some of the resources listed in the **Additional Resources (for Part 2)** include LGBT information. In addition, CHANGE produces **'Lesbian, Gay, Bisexual and Trans'** - an easy read booklet about sexuality, bullying and safe sex (although this is not a free resource).

If you are supporting someone who is LGBT then it is important that you are able to discuss relationships and sexuality openly and sensitively. A lack of good support can lead to the mental, and sexual, health of the person you are supporting being jeopardised. In particular, unsupported LGBT people can experience social isolation, particularly if they live in an area where there are no accessible LGBT venues or activities. The Social Care Institute for Excellence (SCIE) produces a series of online resources for people supporting **LGBTQI+ Disabled People**.

Many people with a learning disability will receive direct payments or a personal budget, which they use to purchase support from a personal assistant. Whilst the Equality Act 2010 makes it unlawful to discriminate in the provision of services due to sexual orientation or gender reassignment, it is obviously very important that the person being supported has a good relationship with their personal assistant and is comfortable being out if they wish to be. In particular, LGBT people may want their personal assistant to attend LGBT venues and activities, and some may want help with organising dates, meeting and being with partners. The **SCIE** provides some ideas about how to recruit personal assistants who will respect sexual orientation and gender identity, including:

- mention sexual orientation or gender identity in the advert/recruitment materials;
- try advertising on local organisations' notice boards and publications;

- try advertising on LGBT websites and Facebook pages/other social media;
- approach local colleges or universities (as they can be a good source of people training to work in health or social care).

In addition, Skills for Care produces a series of general guides regarding **Employing Personal Assistants**.



Key Information and Resources:
Supporting LGBT disabled people

The Social Care Institute for Excellence has identified the following key messages when supporting LGBT disabled people:

- ❖ LGBT disabled people have the right to be treated with dignity and respect, and to live their lives free from discrimination.
- ❖ LGBT disabled people have the right to a personal and social life of their choice.
- ❖ LGBT disabled people have the right to choose whether to be out about their gender identity and/or sexual orientation to their personal assistants/support workers, and may prefer their personal assistants/support workers to also be LGBT.
- ❖ Use of direct payments/personal budgets can enable LGBT disabled people to exercise more choice and control over their social care support.
- ❖ Having more control over their social care support can help LGBT disabled people to connect with their friends and community.

3) *Accessing pornography and sex workers*

Watching pornographic material can be a way to explore and learn about sex, and can potentially make sex easier to understand. However, it is important to

remember that pornography is intended to be watched by adults, and is based on fantasy not real life.

Generally, watching and owning pornography is not illegal unless it shows children (i.e. someone under the age of 18). Pornography which shows ‘pseudo children’ (i.e. adults meant to look like children) is also illegal. Extreme pornography (e.g. violent scenes of physical abuse and rape), is illegal even if it involves adults.

Online pornography can be text, an image or a video that is sexually explicit (e.g. a picture of someone naked or a film of people having sex). More and more of us interact using online resources, and this has led to new issues arising including ‘sexting’ and ‘revenge porn’.

Sexting means sending sexual pictures or videos, or sending sexual messages. Sexting can be done on any device that allows media or messages to be shared (e.g. smartphones, tablets, laptops or mobiles). Sexting is legal, but it is against the law to make, share, have or show indecent images of anyone aged under 18, even if you have their permission.

Revenge pornography is the sharing of intimate private photographs or videos of another person without their consent and with the intention of causing the person distress. Incidents of revenge pornography usually occur following the breakdown of an intimate relationship. Under **s 33 Criminal Justice and Courts Act 2015**, revenge pornography is a criminal offence. Therefore, if you are supporting someone who is a victim of revenge pornography, you should discuss whether they wish to report the matter to the police. A victim of revenge pornography may also be able to bring civil proceedings for damages against the person sharing the images.

Prostitution means receiving or offering sexual services in exchange for payment or the promise of payment. Generally, paying for sex (or being paid for sex) is not illegal, and this applies whether the sex worker is female or male. However, there are a number of criminal offences associated with paying for sex, including:

- it is illegal to pay for sex where the person being paid is under 18;
- street prostitution and kerb crawling are illegal.

It is also an offence to agree to pay for sex where the sex worker is being subjected to force or exploitative conduct by a third party (such as a pimp). It is irrelevant whether the person paying for sex is aware that exploitative conduct has taken place. Therefore, whilst paying for sex is not generally illegal, care needs to be taken before employing a sex worker as exploitation is extremely common in the sex industry.

If you are supporting someone and issues relating to pornography and sex workers arise, then the **Local Solicitors** website provides a range of free information guides that may be useful (including ‘Revenge Porn Laws in the UK’ and ‘Prostitution and Kerb Crawling Laws in the UK’).

Safeguarding considerations

Whilst the law protects the rights of people with a learning disability to express their sexuality and have relationships, it is also important to ensure that disabled people are protected from abusive relationships. Some people with a learning disability are vulnerable to sexual abuse because of factors such as:

- isolation;
- communication problems;
- small social groups;
- limited support services;
- bullying;
- lack of experience; and
- lack of education around relationships and sex.

Some abusers will deliberately befriend and form relationships with a vulnerable or disabled person for the sole purpose of exploiting, abusing or taking advantage of them. The person who is being befriended often welcomes the relationship and does not recognise it as abusive. This is sometimes referred to as ‘**mate crime**’, and can involve physical, emotional, sexual and financial abuse. The Social

Services and Well-being (Wales) Act 2014, places local authorities in Wales under a duty to safeguard vulnerable adults (and children). Therefore, if you are worried that someone you are supporting is being abused, you should consider making a referral to your local social services department.

The Sexual Offences Act 2003 created a number of offences which protect people with a learning disability from sexual abuse. Sections 30 - 33 create a series of offences relating to sexual activity involving a person “*with a mental disorder impeding choice*”, which includes learning disability. The offences are:

- sexual activity with a person with a mental disorder impeding choice (s30);
- causing or inciting a person with a mental disorder impeding choice to engage in sexual activity (s31);
- engaging in sexual activity in the presence of a person with a mental disorder impeding choice (s32); and
- causing a person with a mental disorder impeding choice to watch a sexual act (s33).

In addition, separate offences are created that apply when the person committing the offence is a care worker. These offences carry higher sentences to reflect the breach of trust involved. Concerns about possible sexual abuse should be reported to the police.

The nature of consent and safeguarding in relation to sexual activity was considered in **IM v LM & Others [2014] EWCA Civ 37**, where the Court of Appeal upheld the decision of the High Court Judge (Peter Jackson J) that a woman with hypoxic brain injury had capacity to consent to sexual relations, whilst at the same time lacking capacity to make decisions relating to residence, care and contact with others.

The complex nature of safeguarding decisions means that you should seek advice and support from the relevant professionals if you have any concerns regarding whether the person you are supporting has capacity to consent to a sexual relationship.

Additional Resources (for Part 2)

The following websites contain useful information (*Ctrl + click to follow each link*):

Organisation	Website
<p>BMA (British Medical Association) <i>(Produces online guides to assist medical professionals who have to assess whether a young person is competent to make decisions, and who work with vulnerable adults)</i></p>	<p>www.bma.org.uk/advice/employment/ethics/children-and-young-people/children-and-young-peoples-ethics-tool-kit</p> <p>www.bma.org.uk/advice/employment/ethics/mental-capacity/vulnerable-adults-and-confidentiality</p>
<p>Brook <i>(Sexual health and wellbeing charity for under 25s)</i></p>	<p>www.brook.org.uk/</p>
<p>CHANGE <i>(Human rights organisation led by disabled people that produces a series of easy read guides relating to relationships, which are available to purchase)</i></p>	<p>www.changepeople.org/shop/products</p>
<p>FPA (Family Planning Association) <i>(Charity providing information about the law relating to sexual behaviour in the UK)</i></p>	<p>www.fpa.org.uk/factsheets/law-on-sex</p>
<p>LawStuff <i>(Advice guides for young people on a range of topics, including sexual relationships, written by the Coram charities)</i></p>	<p>https://lawstuff.org.uk/</p>
<p>Leonard Cheshire Disability <i>(Charity supporting disabled people to fulfil their potential and live the lives they choose)</i></p>	<p>www.leonardcheshire.org/</p> <p>In Touch sexual health project report: www.leonardcheshire.org/sites/default/files/In%20Touch%20closing%20report.pdf</p> <p>and online resources: www.leonardcheshire.org/about-us/latest-news/news-and-blogs/sex-and-relationships</p>
<p>The Mix <i>(Support service for young people providing help on a range of issues, including sex and relationships)</i></p>	<p>www.themix.org.uk/</p>

<p>National Development Team for Inclusion <i>(Not for profit organisation working to enable people at risk of exclusion, due to age or disability, to live the life they choose)</i></p>	<p>www.ndti.org.uk/</p> <p>Report on: ‘Supporting people with learning disabilities to develop sexual and romantic relationships’ www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjz8q0wK3aAhXSI1AKHQOyCsgQFggzMAE&url=http%3A%2F%2Fwww.bild.org.uk%2FEasySiteWeb%2FGatewayLink.aspx%3FalId%3D7713&usg=AOvVaw3IeR9ve63jHWYam2rUfHPz</p>
<p>National Health Service: Health A-Z <i>(Information about a range of sexual health issues)</i></p>	<p>www.nhs.uk/Livewell/Sexualhealthtopics/Pages/Sexual-health-hub.aspx</p>
<p>The Outsiders Club <i>(Run by The Outsiders Trust, the Club offers disabled people the chance to enjoy peer support, make new friends and find partners)</i></p>	<p>www.outsiders.org.uk/outsideclub/club/the-outsiders-club/</p>
<p>Stars in the Sky <i>(Dating agency specialising in supporting people with disabilities)</i></p>	<p>www.starsinthesky.co.uk/105/lgbt?zx=c51cc3109fb6bdd6</p>

Part 3 – Marriage and enduring relationships

Relationships with other people are a central aspect of the human experience. People engaged in a meaningful relationship often decide to live together or to get married. However, not all relationships last and some couples separate. Part 3 of the toolkit considers the law relating to marriage and other enduring relationships, and also what happens when a relationship ends.

Part 3 is divided into six sections:

- ❖ **Marriage and civil partnerships – the legal requirements**
- ❖ **Common law marriage**
- ❖ **Ending a relationship**
- ❖ **Sorting out property and finances**
- ❖ **Domestic abuse**
- ❖ **Getting legal advice**

A list of **Additional Resources (for Part 3)** is also included.

This toolkit does not deal with the law relating to children. If you need information about what is likely to happen to a child if the parents separate, then you might find it useful to look at the ‘Private Law’ section in the **Supporting parents with a learning disability through the child protection system** toolkit on the Mencap Cymru website.

Marriage and civil partnerships – the legal requirements

In the UK, the legal age to get married is 16. However, a young person between the ages of 16 and 18 needs the consent of an ‘appropriate person’ (usually a parent) before they can get married. A marriage can either be a religious ceremony, which is performed by an authorised religious celebrant, or a civil ceremony conducted by a state registrar. Since 2014, it has also been possible for same-sex couples to marry.

Same-sex couples can also enter into a civil partnership, which is also a legally recognised relationship. The rules relating to age are the same for civil partnerships as they are for marriage. It is also possible to convert a civil partnership into a marriage, although generally the rights of civil partners and married spouses are the same.

Transsexual people have exactly the same rights in relation to marriage and civil partnerships as other people of their acquired gender. For example, a male-to-female transsexual person may marry a man or a woman, and could also form a civil partnership with a woman, once she receives legal recognition of her acquired gender.

In the same way that someone has to have capacity to consent to a sexual relationship (see [The law relating to consent and capacity](#)), a person also has to have capacity to consent to marriage or a civil partnership. As with sexual relationships, if the person does not have capacity it is not possible for someone else to consent on the person's behalf, and under the Anti-Social Behaviour Crime and Policing Act 2014 it is a criminal offence to cause a person who lacks capacity to marry.

Common law marriage

Many couples chose to live together in a long term relationship without getting married or forming a civil partnership. People often believe that by cohabiting for a long time they become 'common law' spouses. This is a myth, and there is no such thing as common law marriage. As cohabiting couples are not in a legally recognised relationship this can impact on major issues, such as who can act as next of kin and what happens to the family property if one partner dies. For example, if one partner dies without leaving a will, the surviving partner will not automatically inherit anything unless the couple owned property jointly. However, if the couple were married then the surviving spouse would automatically inherit a share of the estate.

It is possible for cohabiting couples to draw up a 'cohabitation agreement', which sets out the rights and obligations of each partner towards the other. Citizens

Advice provide an online guide to **Living together and marriage: legal differences**, which includes information about cohabitation agreements and their legal enforceability.

Ending a relationship

The action needed to bring a relationship to an end varies depending on the nature of the relationship.

A couple who have lived together but not married/formed a civil partnership can end their relationship without taking any formal legal steps. Couples who are married/civil partners have to formally end their relationship by getting a divorce or a dissolution of their civil partnership. The following chart shows the key steps required in order to obtain a divorce, although the procedure for obtaining a dissolution of a civil partnership is generally the same.

Before you can apply for a divorce you must have been married for at least 1 year

How the divorce procedure works:

1. **You issue a petition**, which is a document stating that your marriage has broken down irretrievably and you want to end the relationship.



2. The **petition is sent to your partner** so they are aware that you wish to have a divorce.



3. Your **partner responds to the petition**, stating whether they agree that the relationship has broken down irretrievably and that there should be a divorce.



4. **You apply for a decree nisi**, which is a court order confirming that you have satisfied the legal and procedural requirements, and are entitled to get divorced.



5. At least 43 days (6 weeks and 1 day) after the decree nisi is issued, **you apply for a decree absolute**, which is the court order that brings the marriage to an end.

In most cases both partners agree that there should be a divorce, and so the divorce is dealt with administratively without the need to attend court.

In order to obtain a divorce, the court must be satisfied that the marriage has broken down irretrievably and that there is nothing that could help the parties to remain married (such as attending relationship counselling). The court will only be satisfied that a marriage has broken down irretrievably if one of the ‘five facts’ is established.



Key Information and Resources:

The 'five facts'

The five facts are:

- I. *Adultery* - your partner has had a sexual relationship with a person of the opposite sex whilst married to you.
- II. *Unreasonable Behaviour* - your partner has behaved in such a way that you cannot reasonably be expected to live with them (e.g. they have been physically or emotionally abusive towards you).
- III. *Desertion* - your partner has left you, without your agreement, for a period of at least 2 years.
- IV. *Living apart for 2 years (with consent)* – you and your partner have been living separate lives for at least 2 years and both agree to the divorce.
- V. *Living apart for 5 years (without consent)* – you and your partner have been living separate lives for at least 5 years, in which case it does not matter whether your partner agrees to the divorce or not.

Generally, the process for obtaining a dissolution of a civil partnership is the same as for getting divorced. The one main difference is that there are only four ways to show that a civil partnership (or a same-sex marriage) has broken down irretrievably, as it is not possible to rely on adultery, as adultery requires a relationship between people of different sexes. However, if you were in a civil partnership or same-sex marriage and your partner had a relationship with another person of the same sex, you would be able to end the relationship on the basis that your partner was behaving unreasonably towards you.

The court charges a fee to begin divorce/dissolution proceedings, but people who are on a low income may qualify for a fee exemption.

Sorting out property and finances

When a relationship ends, there can often be disagreements about property and finances that need to be resolved. Whilst it is possible to ask the court to decide how and assets and liabilities should be split, going to court can be a long and expensive process. Therefore, it is better to try and reach an agreement about how any assets should be divided, and *mediation* is a good way to discuss and resolve issues.

The main aim of mediation is to repair a breakdown in communication between parties with the help of a professionally trained mediator. Mediators do not give legal advice, but will try and help the parties to reach an agreement. If mediation is successful, a ‘memorandum of understanding’ will usually be drawn up, setting out what has been agreed during the mediation process. However, even where an agreement is reached, parties may be advised to seek independent legal advice from a solicitor regarding the terms of the agreement. Mediation must usually be attempted before an application can be made to the court for an order setting out how property/finances are to be divided. If you need to find a mediator, the Family Mediation Council has an online **Find your local mediator** search facility. Before the mediation process begins, the mediator will be able to provide information about the cost of the mediation service, and some mediation services are free to people who are on a low income.

If it is not possible to reach an agreement, then an application will need to be made to the court for a financial order. The court has power to make orders in relation to *income* (e.g. that one partner should pay the other partner regular maintenance), and also in relation to *capital* (e.g. dividing up savings and property). The court cannot usually deal with *child maintenance*, and if an agreement cannot be reached about maintenance for any children it will be necessary to make an application to the Child Maintenance Service. Information about child maintenance is available via the **Child Maintenance Options** website.

When the court is considering what order to make about finances, it must take into account the factors set out in section 25 Matrimonial Causes Act 1973. The first

thing that the court must consider is the welfare of any child of the family (under the age of 18). The court must also consider:

- the income, earning capacity and other financial resources of each party;
- the financial needs and responsibilities of each party;
- the family's standard of living before the end of the marriage;
- the age of the parties and the duration of the marriage;
- whether any party has a disability;
- the contributions made to the welfare of the family;
- any conduct issues;
- the value of any benefits that will be lost as a result of the divorce.

No one factor in the list is more important than any other, and the court's objective will be to achieve a fair division of the assets, although this does not necessarily mean that the assets will be divided equally. For example, if one party has greater future earning potential than the other, then the party with lesser earning potential may be awarded a larger share of the matrimonial assets. Wherever possible, the court will look to achieve a clean break, so that the divorce ends both the personal and financial relationships between the parties.

As with divorce/dissolution proceedings, the court charges a fee to process applications relating to property and finances, but people who are on a low income may qualify for a fee exemption.

If the family does not have any assets and/or is in receipt of welfare benefits then there may be little point in either party making a claim for financial support. However, entitlements to some benefits vary depending on whether the person claiming is single or in a relationship. Therefore, if you are supporting someone who receives welfare benefits, it is usually sensible to check that they are receiving all of the benefits to which they are entitled after a relationship ends. Citizens Advice provides an online guide to **Benefits and help with council tax when you separate**.

Financial Relief for civil partners

Civil partners are also entitled to claim financial support.

The criteria for deciding claims for financial relief made by civil partners are the same as those that apply when a marriage breaks down.

Financial Relief for cohabitees?

Cohabitees **do not** have a legal duty to support each other if their relationship breaks down.

How any property is divided will depend on whether the property is jointly owned and the contributions made by each partner.

Domestic abuse

Sometimes relationships break down as a result of one partner being abusive towards the other partner. Abusive behaviour can take many forms including physical and emotional abuse, and financial abuse. If you are supporting someone who is experiencing abuse, it is possible for them to apply to the court for an order, sometimes called an injunction, to prevent the abuse.

In order to obtain an injunction the person applying and the abuser have to be 'associated persons'. Generally, if two people have been in a relationship, including a same-sex relationship, they will be associated persons.

There are two main types of injunction available:

- *Non-molestation order* - this prevents violence and harassment, and can be used to provide a wide range of protection (e.g. the order could prevent the abuser from behaving violently, or from making contact via social media).

- *Occupation Order* - this regulates who can live in the family home and the surrounding area (e.g. the order could remove the abuser from the family home, or prevent them from coming within a certain distance of the property).

Abusive behaviour can also be a criminal offence, and so it may also be possible to obtain help from the police. In an emergency, it is likely that the police will be the first point of contact. The **Report domestic abuse** website has information about the different organisations that are available to provide advice if you are supporting someone who is in an abusive relationship.

Getting legal advice

From April 2013, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 removed legal aid from proceedings relating to the breakdown of a relationship. This means that legal aid is generally not available to obtain a divorce or an order about property or finances. Where the case involves domestic abuse, legal aid may be available. The Legal Aid Agency has an **online eligibility checker**, which asks a series of questions about the type of dispute and the person's financial circumstances, and then provides information regarding whether legal aid is available.

If legal aid is not available, any legal advice has to be paid for privately. Many people cannot afford to pay for legal advice and so have to represent themselves, without a lawyer. This is known as being a *litigant in person*. The **Bristol Family Court** has created its own website explaining the work of the Family Court and providing links to a range of resources for litigants in person. Although it is a court in England, the majority of the information provided applies equally to courts sitting in Wales. Mills & Reeve solicitors produce a free online guide **Legal terms explained**, which explains legal language in everyday terms.

Additional Resources (for Part 3)

The following websites contain useful information (*Ctrl + click to follow each link*):

Organisation	Website
<p>Citizens Advice <i>(Produces a series of online guides relating to marriage, civil partnerships and cohabiting)</i></p>	<p>www.citizensadvice.org.uk/wales/</p>
<p>Free Legal Advice and Assistance <i>(Many firms of solicitors provide free online information relating to relationship breakdown)</i></p>	<p>Blake Morgan divorce guide: www.blakemorgan.co.uk/training-knowledge/guides/divorce-guide/</p> <p>Mills & Reeves divorce resources: www.divorce.co.uk/divorce-resources</p> <p>Slater and Gordon divorce guide: www.slatergordon.co.uk/family-and-personal-matters/guide-to-relationship-breakdown-and-divorce/</p>
<p>UK Government <i>(The Westminster Government provides online information relating to relationship breakdown)</i></p>	<p>Marriage, civil partnership and divorce: www.gov.uk/browse/births-deaths-marriages/marriage-divorce</p> <p>Get an injunction if you've been the victim of domestic violence: www.gov.uk/injunction-domestic-violence</p> <p>Court and Tribunal Fees: www.gov.uk/court-fees-what-they-are</p>
<p>Welsh Government <i>(The Welsh Government provides services to promote awareness of, and to prevent, domestic abuse)</i></p>	<p>Live Fear Free website <i>(providing information and advice relating to domestic abuse and sexual violence)</i>: http://livefearfree.gov.wales/?skip=1&lang=en</p> <p>Live Fear free helpline <i>(provided by Welsh Women's Aid on behalf of the Welsh Government)</i>: http://www.welshwomensaid.org.uk/</p>

For More Information you can contact Mencap WISE on:

0808 8000 300 (Monday to Friday, 9 a.m. – 5 p.m.)

Or

e-mail: information.wales@mencap.org.uk



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