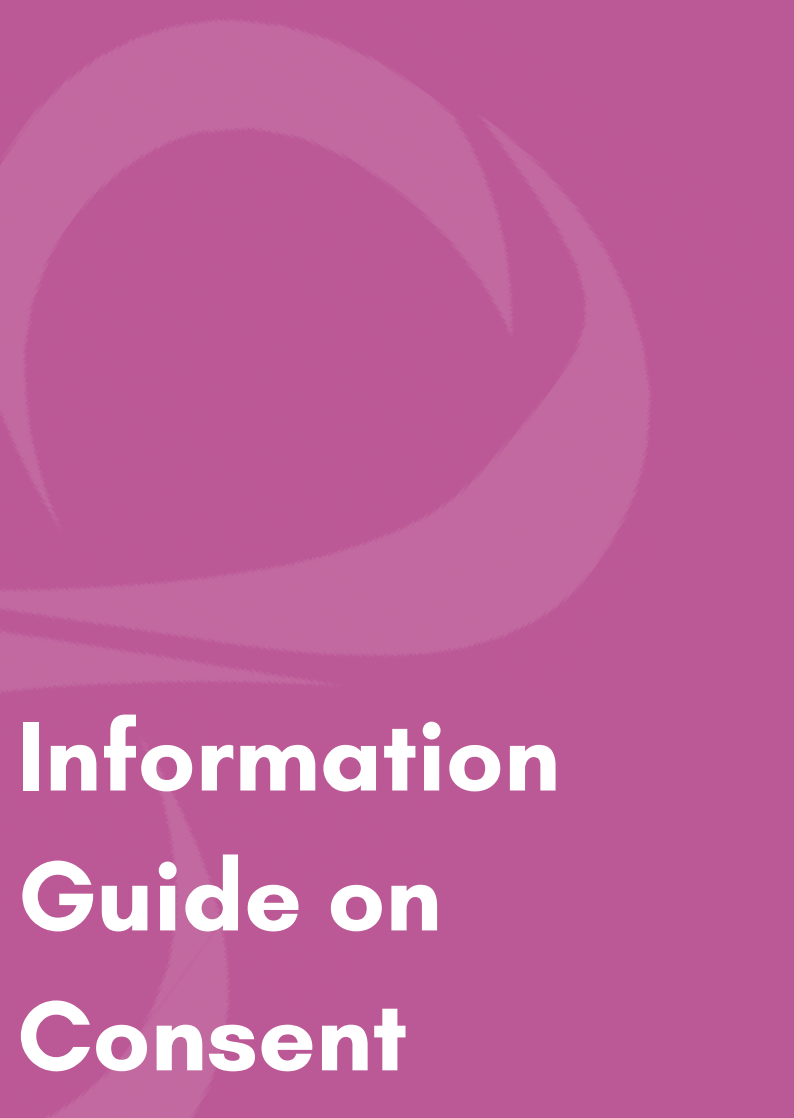




Information Guide on Consent

What is Consent?

Consent is not ongoing and needs to be asked for every time any new form of sexual activity takes place, even if it is with an existing or previous sexual partner.

A person consents if he/she agrees by choice, and has the freedom and capacity to make that choice.

Consent is not simply agreement. Someone may agree, however, without the freedom to say yes or no and the capacity to say yes or no, ('saying' here refers to both verbal and non-verbal forms of communication) there is **no consent**.

Children **12 years and under** are held as not having the capacity to legally consent to any form of sexual activity. As such, regardless of whether agreement is given, all sexual contact with a child 12 years or under is automatically non-consensual.

The Legal age of consent is 16 for both men and women. This is the legal age regardless of the gender or sexual orientation and whether the activity is between people of the same or different sex. This means it is an offence for anyone to have any sexual activity with a person under the age of 16. It is important to note however, that the Home Office guidance is clear there is no intention to prosecute teenagers under the age of 16 where they are of a similar age and there is mutual consent.

It is also an offence for a person aged 18 or over to have any sexual contact with a person under the age of 18 if the older person holds a position of trust (for example a teacher or key worker).

A person accused of rape needs to prove not just that they believed in consent, but that this belief was reasonable.

The onus here is not on giving of consent, but is on getting of consent. That is, the offence is committed when someone cannot prove that they took reasonable steps to check whether someone else was consenting to what was happening. The most reasonable step to take to ascertain consent is to ask.

This legal standard of reasonableness means that, for example, if someone was drunk to the point they were not making much sense, or they appeared indifferent or unresponsive, then it would not be considered reasonable to believe that they wanted to have sex. Recent guidance from the Crown Prosecution Service states that all the circumstances at the time of an offence will be looked at in deciding whether it is reasonable for the perpetrator to claim they believed the survivor consented. People will be considered most unlikely to have agreed to sexual activity if they were subject to threats or fear of serious harm, unconscious, drugged, abducted, asleep, or were unable to communicate because of a disability.

Penile penetration of the vagina, anus or mouth without consent is rape. This applies whether the people involved know each other, are currently or have been previously in a relationship, or are total strangers and does not make it any more/less serious.

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