

DERBYSHIRE CONSTABULARY

**INTERIM GUIDANCE ON**

**SEXTING**

**Background**

1. The National Police Chiefs Council Lead for Child Protection, Chief Constable Bailey of Norfolk Constabulary in conjunction with the College of Policing are in the process of writing national guidance for the police service to tackle the issue of sexting.
2. This document is intended to serve as **interim guidance** to officers and staff within Derbyshire Constabulary pending the production of the national position. It is guidance and not doctrine - each case should be dealt with on its merits where officers use their professional judgement in line with the values of the force.

**Definition**

3. Whilst there is no accepted definition of 'sexting' it is commonly understood to involve the sending of indecent images from one person to another through digital media devices. Where those images are of children criminal offences are committed.
4. This practice goes on between adults and children alike. Generally where it is between consenting adults it is a private matter and not against the law. Where the images are of children criminal offences are committed.
5. Children often take sexualised images of themselves and sometimes share them. Whilst offences are committed our overriding objective is to safeguard children. Such activity should be termed as 'Youth Produced Sexual Images.'
6. In Derbyshire the term 'sexting' should be confined to

*The sharing of indecent images of children between children (up to 18 years) on a consensual basis and in the absence of any aggravating factors.*

*Aggravating factors would include*

- *the involvement of an adult*
- *the onward forwarding of such images without informed and true consent,*
- *the use of force, fraud, exploitation or bullying.*
- *previous offending where an individual child has been previously warned by police of the offences under the 1978 Act and they have been documented on Guardian / Niche as being involved in the crime.*

*It is important to be mindful that this practice can lead to sexual exploitation through on line grooming, bullying and self-harm.*

7. The sharing of indecent images of children outside this definition should **not** be termed 'sexting.' It is a criminal offence in accordance with the circumstances presented against the laws laid down by parliament.

### **Law and Recording**

8. The offences committed will be determined on the basis of what best fits the circumstances of the case.
9. The most likely offences to be committed are those under Section 1 of the Protection of Children Act 1978, as amended by section 45 of the Sexual Offences Act 2003. It is a crime to take, make, permit to take, distribute, show, possess, possess with intent to distribute, or to advertise indecent photographs or pseudo-photographs of any person below the age of 18.
10. Where the circumstances fit a crime report should always be recorded in line with the National Crime Recording Standard. NCRS is not concerned with how we deal with a crime just that we record it.
11. Home office classification 086/02 relates. It is a state crime whereby the victim is Regina. The individuals involved should not be logged as the victim. They are a suspect or a witness depending on what they have done.

### **Policy Position**

12. Derbyshire Constabulary follows the ACPO position.
13. The Association of Chief Police Officers does not support the prosecution or criminalisation of children for **taking indecent images of themselves and sharing them**. Being prosecuted through the criminal justice system is likely to be distressing and upsetting for children, especially if they are convicted and punished. The label of 'sex offender' that would be applied to a child or young person convicted of such offences is regrettable, unjust and clearly detrimental to their future health and wellbeing.
14. The Association of Chief Police Officers considers that a safeguarding approach should be at the heart of any intervention. This approach is informed by Section 1(1) of the Children Act 1989, which state that within the context of any statutory intervention the welfare of the child is paramount. This approach is reinforced by Section 11 of the Children Act 2004, which places a duty on key persons and bodies to make arrangements to safeguard and promote the welfare of children.
15. A child who has merely taken and shared an indecent image of themselves should not be prosecuted save in exceptional circumstances.

## Sexting - Investigative Actions, Referrals and Likely Outcome Codes

16. Your primary objective is to ensure the safety and wellbeing of children involved.
17. Take the report and record the appropriate crime. Undertake preliminary but proportionate enquiries to assess whether there are aggravating factors present or not. This should include intelligence research on the parties involved on both police and social care systems. To check with children's social services make direct contact with,
  - a. Derby City – First Contact Team – Tel. 01332 641172
  - b. Derbyshire County – Call Derbyshire – Tel. 01629 533190
18. An information sharing agreement is in place between all members of the Derby and Derbyshire Local Safeguarding Children's Boards in order to safeguard children.
19. Having regard to both what you are told by those reporting and the background checks make an assessment as to whether there are aggravating factors.
20. You will, by definition, deal with two or more children and their individual levels of involvement and culpability should be considered independently.
21. If aggravating factors are *established or believed* to exist undertake a full investigation. Seize relevant digital devices and submit to the High Tech Crime Unit for examination. All children involved should be notified to the City or County Referral Unit who will consider making a formal 'child at risk of significant harm' referral to Social Services. Do not wait for the outcome of the formal investigation to do this. Likely Outcome codes 1 (charge/summons) or 2 (youth caution.)
22. If you *believe* there is no realistic likelihood of aggravating factors and all parties are in agreement; have those involved delete the imagery from the devices by use of the 'factory reset' functions. This is for the owner of the device to satisfy you this has been done. If you are not satisfied and believe indecent images remain in their possession consider reverting to a formal investigation. Where there are no aggravating factors all children involved should be notified to the City or County Referral Unit who will consider making a formal 'child in need' referral to Social Services. Likely outcome codes 21 - police do not believe it to be in the public interest to undertake an investigation sufficient to meet the CPS evidential test
23. Where after such preliminary enquiries you are unsure and *suspect* there are aggravating factors you may commence an initial investigation. Seize the relevant devices and liaise with the HTCUC supervisor for tactical advice. They will consider the use of triage devices such as XRY kiosk to satisfy your concerns. If you establish aggravating factors continue with a full investigation and submit the devices to the HTCUC. If your suspicions are negated return the devices and ensure imagery is deleted by the owner as above. Likely outcome codes 1, 2 or 10 – police do not believe it to be in the public interest to proceed after an investigation.
24. Do not overlook the rights and interests of parents and guardians in your enquiries.

### **Prevention and Reassurance Activity**

25. All statutory agencies have a duty to safeguard children. Most are members of the Local Safeguarding Children's Boards. There is prevention activity and resources made available to schools and other establishments through those boards.
26. National organisations such as the Child Exploitation and Online Protection Command of the National Crime Agency, the NSPCC and Barnardo's; amongst others have provided resources for partners to raise awareness of and prevent Sexting. These resources may be accessed through the Child Exploitation Investigation Units web pages on the force intranet.
27. Local officers requested to engage in preventative work are asked to liaise with the CEIU so that a coordinated approach can be taken under the LSCB plans.

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Public Protection  
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