



Sexual offences involving children and young people: A guide

Created for The Wellbeing Hub by
David Smellie, Partner at Farrer & Co



— The —
**Wellbeing
Hub**
— from Teen Tips —



Contents

- 1.0 Introduction.....1
- 2.0 Scale of the Problem.....2
- 3.0 The Impact of Survivors, Consequences for offenders.....3
- 4.0 Categories of Sexual Offences.....4
 - 4.1 Non-consensual offences (any age).....5
 - 4.2 Offences against Under 13's.....6
 - 4.3 Offences against Under 16's.....7
 - 4.4 Offences against Under 18's.....7
 - 4.5 Offences against children which can only be committed by over 18's.....8
 - 4.6 Other non-consensual offence (any age).....9
 - 4.7 Media/ social media offences.....10
 - 4.8 Harassment, stalking and coercive control.....10
- 5.0 Offender Consequences.....12
- 6.0 The Future.....13
- 7.0 Glossary.....14



1.0 Introduction

Sexual Offences Involving Children and Young People: A Guide developed in conjunction with David Smellie, Partner at Farrer & Co, is a resource that aims to raise awareness and prevent sexual violence and harassment among young people. It covers the legal definitions, consequences, and impacts of various sexual offences, as well as the importance of consent and reporting.

The guide is intended to educate and empower young people to protect themselves and others from sexual harm.



David Smellie Partner at Farrer & Co

David is consistently rated one of the top employment and safeguarding lawyers in the UK.

David advises leading independent schools and focuses on issues relating to staff, pupils and parents – from sensitive dismissals to pupil exclusions and parental complaints. David is also probably the most experienced safeguarding lawyer in the country. He founded the firm's Child Protection Unit (now known as The Safeguarding Unit) in 2015 which advises organisations either working or coming into contact with children.

2.0 Scale of the Problem

- It is very hard to know how many sexual crimes happen between people under 18 years old.
- The police recorded more than three times as many sexual crimes between 2013 and 2019, these numbers dipped during the pandemic, but post-pandemic there has been a significant rebound in recorded offences.
- The police records are not the whole picture. Many sexual crimes are not reported to the police, especially by young people. The real number of sexual crimes could be five times higher than the police records.
- Ofsted's survey of 900 pupils as part of its review in the wake of Everyone's Invited found that 90% of girls had experienced receipt of sexual images they did not want to see and 64% had experienced unwanted sexual touching.
- Some reasons why young people do not report sexual crimes are: they feel ashamed, they are afraid of what their friends will say, and they do not trust the justice system to help them or protect them.

68,109 rapes were recorded by police between July 2022 and June 2023.

By the end of that 12-month period, charges had been brought in just 2.2% (1,498) of cases meaning just 2 in 100 rapes recorded by police between July 2022 and June 2023 resulted in someone being charged that same year, let alone convicted.

3.0 The impact on survivors, consequences for offenders

The impact of sexual offences on children can be huge and often life-changing in the short, medium, and long term. However, offenders often disregard the potential life-changing consequences for themselves of being arrested, cautioned, or convicted of a sexual offence. Even where there is no criminal prosecution, the consequences of suspension and school exclusion can be severe. The purpose of this briefing is to explain to all young people the various criminal offences involved and their potential consequences.

Sexual violence and abuse impacts the lives and wellbeing of victims and survivors in lots of different ways. It can affect their:

Physical Health

Behaviour

Social life

Daily Routine

Sleep

Sex life

Relationships
romantic and non-
romantic

Job & finances

Habits

Mental &
emotional health

4.0 Categories of Sexual Offences

Many different types of sexual offences can be committed, and they can be defined differently depending on the age of the people involved and the laws that apply. This complexity can make it difficult for young people to understand what types of sexual violence or harassment are illegal when it comes to child-on-child sexual violence or harassment. The purpose of this guide is to explain these concepts in a way that is easy and digestible to understand with the aim of increasing awareness and understanding.



4.1 Non-consensual offences (any age)

Rape - Penetration of vagina, anus or mouth by penis without consent.

The concept of consent is crucial and often misunderstood. For the purposes of this discussion, it is important to note that a person cannot be deemed to have given consent to any kind of sexual activity if they (a) were not old enough or did not have sufficient understanding to make a choice, (b) were asleep or unconscious, (c) were incapacitated due to alcohol or other substances, or (d) were deceived (e.g., as to gender or use of a condom).

Assault by Penetration - penetration of vagina or anus by any part of body or anything else without consent.
The key concept, as with rape, is consent.

Sexual Assault - sexual touching of another person with any part of the body or anything else without consent.

The key concept, as with rape, is consent. Sexual touching is interpreted broadly and can be penetrative or non-penetrative. Touching through clothes can still be sexual, and touching another part of the body can be sexual if the purpose is sexual.

Incitement - causing a person to engage in sexual activity without consent

The key concept as with rape is consent. Sexual activity is defined widely as per sexual touching above.

4.2 Offences against under 13s

All of the above offences are automatically committed regardless of consent where victim is under 13.

Whilst any adult or child over 12 can be found guilty of such an offence, the intention of the legislation is not to criminalise, for example, two children of similar age engaging in sexual activity in the absence of coercion, exploitation or an abuse of trust.

4.3 Offences against under 16s

Sexual Activity

Sexual touching of a child under 16 with any part of the body or anything else regardless of consent.

Where the two children involved are similar in age, e.g. both under 16 or say one 15 and the other 16, and both are willing participants, public policy considerations come into play and will make prosecution unlikely. By contrast where there is a gap in age or levels of maturity and understanding between the parties, where there has been any threat, deception, grooming or manipulation and where there is penetrative activity, a prosecution is more likely to result.



Categories of Sexual Offences

Causing or inciting a child to engage in sexual activity regardless of consent.

This offence would most typically be committed via text or other electronic message, and the act of incitement is still criminal even if no unlawful sexual activity in fact occurs.

Similar public policy considerations as above will apply to the question of whether to prosecute where the parties are both children of similar age and maturity and there is an absence of aggravating circumstances.

Engaging in sexual activity in a child's presence

Engaging in sexual activity knowingly in the presence of a child (for purpose of sexual gratification).

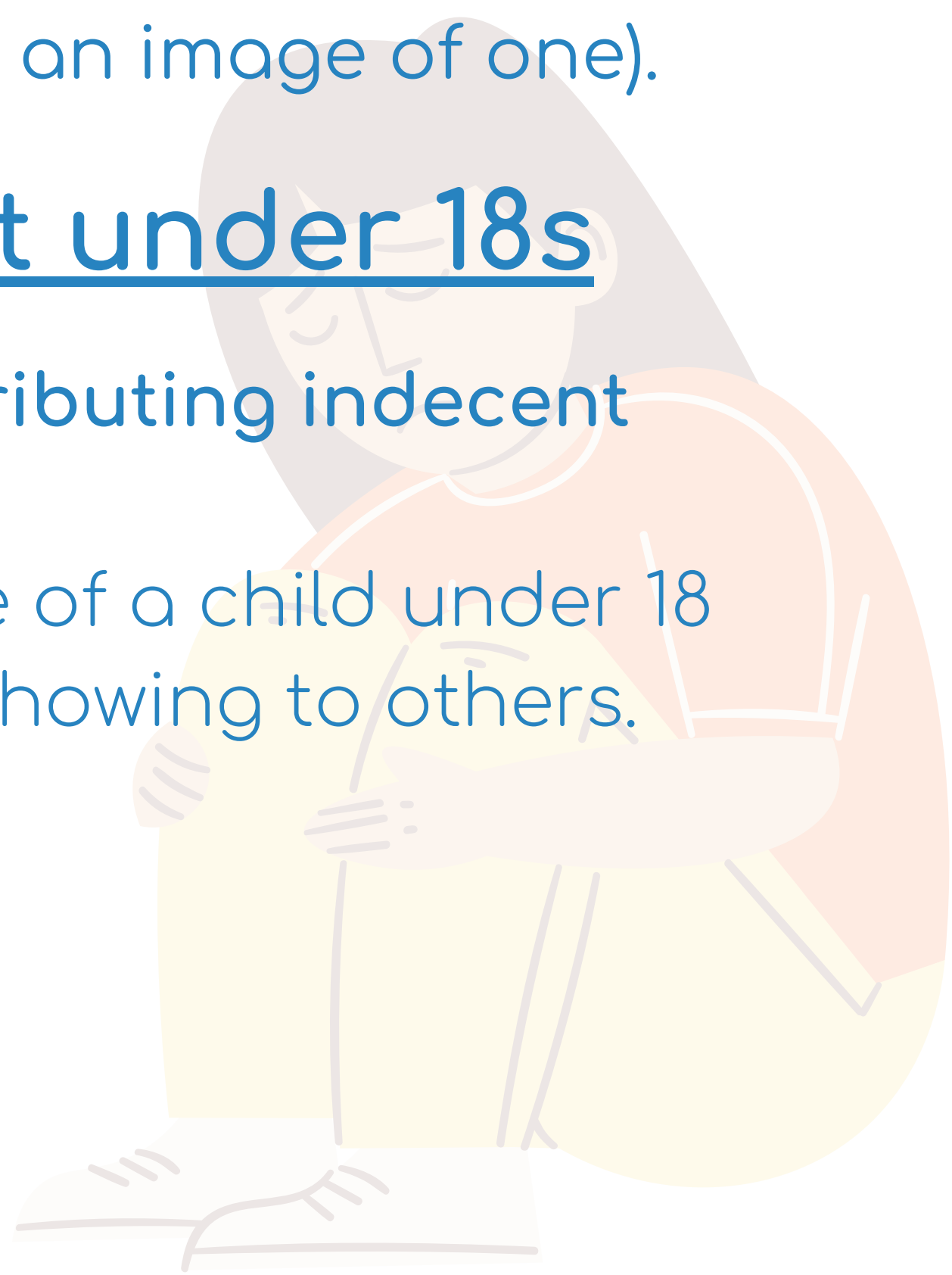
Causing a child to watch a sexual act

For the purpose of sexual gratification, causing a child to watch a sexual act (or an image of one).

4.4 Offences against under 18s

Possession with a view to distributing indecent images

To possess an indecent image of a child under 18 with a view to distributing or showing to others.



Categories of Sexual Offences

Taking or making indecent images

To take, make, permit to be taken or made, distribute or show an indecent image of a child under 18.

The following are caught: taking an image (whether of oneself or another person) with a camera or another device; opening an attachment to an email; downloading an image from the web onto a device screen; accessing a website in which images appear by way of pop up; live streaming images on a device. Images for these purposes may be actual or pseudo photographs.

Possession of a prohibited image – possession of an image of a child under 18 which is grossly offensive, disgusting or otherwise of an obscene character.

This offence is primarily directed at non photographic images such as cartoons, CGIs, manga images or drawings.

4.5 Offences against children which can only be committed by over 18s

Abuse of position of trust

All of the offences against under 16's above are offences where the child is 16 or 17 and where the offender is an adult in a position of trust.

Categories of Sexual Offences

Sexual communication with a child

Where a person over 18 intentionally communicates with a child under 16 where the communication is sexual or is intended to elicit a sexual communication in response.

4.6 Other non-consensual offences (any age)

Voyeurism

Where for the purpose of sexual gratification someone observes, installs or operates equipment or records another person doing a private act without their consent. Private act means where the person is in a place which can reasonably be expected to provide privacy and involves genitals, buttocks or breasts being exposed (or covered only with underwear), the person using a lavatory or the person doing a sexual act not ordinarily done in public.

Upskirting

As per voyeurism above but where someone operates equipment or records an image beneath the clothing of another person without consent so as to observe or record that person's genitals, buttocks or underwear.

Revenge pornography

Disclosing private sexual photographs or films without the consent of the individual who appears in them with intent to cause distress.

4.7 Media/ social media offences

Communications with intent to cause distress or anxiety

Where a person sends to another person a communication which conveys a message which is threatening, indecent or grossly offensive, or false for the purpose of causing distress or anxiety. These offences, under the Malicious Communications Act 1988 or the Communications Act 2003 most commonly involve communications exchanged via social media but apply equally to e-mails, internet blogs and text messages. Frequently these offences co-exist alongside some of the other sexual offences referred to where there have been elements of threat, deception, coercion etc.

4.8 Harassment, stalking and coercive control

Harassment

A course of conduct which a person knows is likely to alarm or cause another person distress. A course of conduct in relation to the harassment of another person consists of two or more actions.

Stalking

Harassment which takes the form of following, contacting, publishing material, monitoring use of electronic communications, loitering, watching or spying or interfering with other person's property.

Categories of Sexual Offences

Putting in fear of violence

Harassment or stalking conduct which a person knows, or ought to know, will cause another to fear that violence will be used against them.

Coercive control

Where two people are in an intimate relationship and one repeatedly behaves towards the other in a manner which he knows will have a serious affect on the other (i.e. fear of violence or alarm or distress which impacts on the other's usual day to day activities). See our guide on Coercive Control in resources.



5.0 Offender Consequences

Whenever a criminal offence is suspected of having been committed by or against a child, schools and colleges are duty bound to refer them to the Police and Children's Services under Keeping Children Safe in Education (with limited exceptions such as low risk youth produced sexual imagery). The same logic would apply to any other organisation working with children, such as a voluntary organisation, church, or sports club. It is to be hoped that with increasing numbers of children feeling confident to share their concerns with trusted adults, some of the historical under reporting of these offences to the Police will diminish.

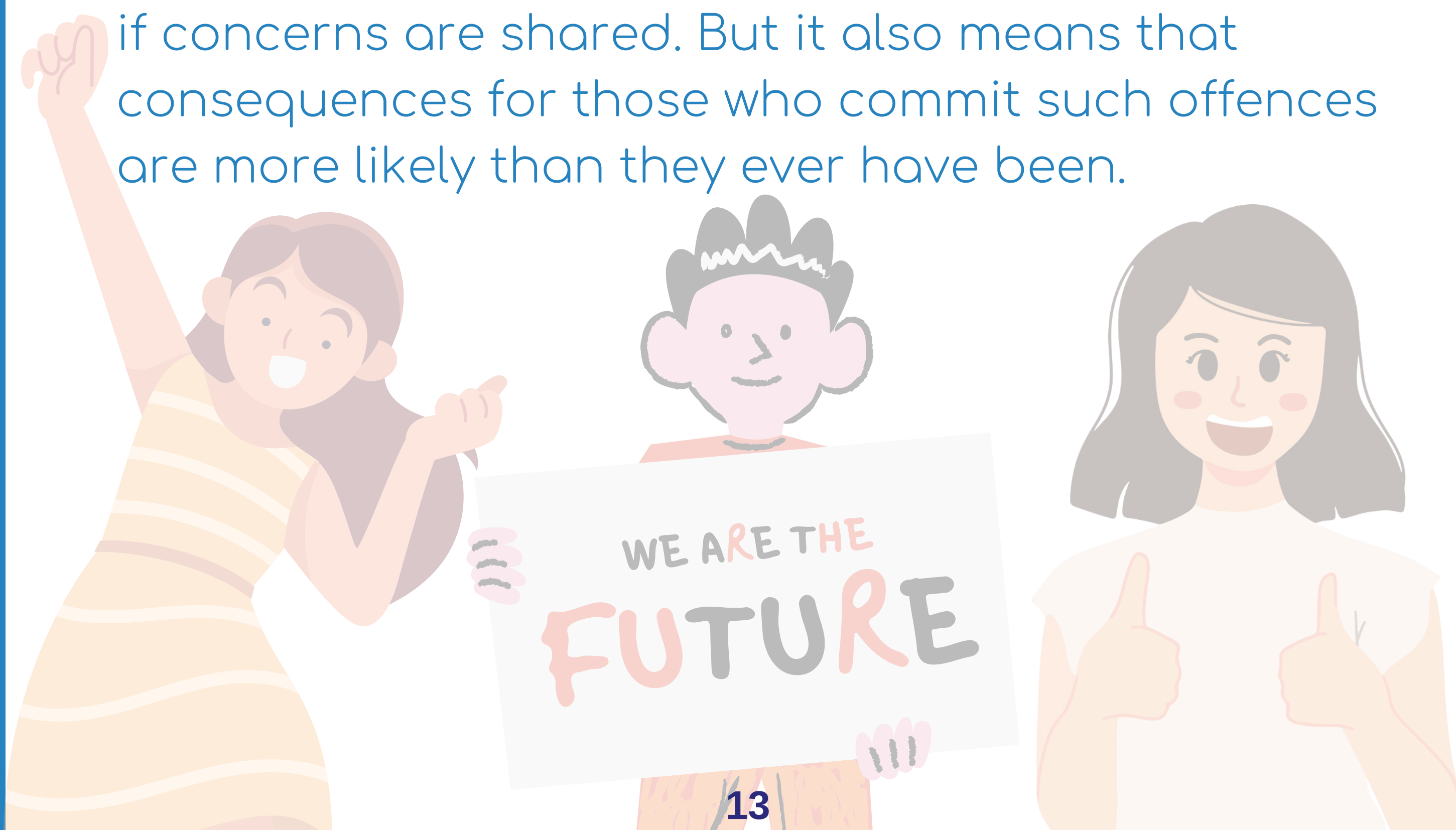
Children who have been subject to such offending should feel confident that the Police will respond proportionately to individual cases – much progress has been made in recent years and the Crown Prosecution Service and Sentencing Guidelines make clear that there is no desire or intention to criminalise children and young people unless specific higher risk aggravating factors are present as discussed.

Children who do, or may in the future, commit sexual offences against other children need to consider the potentially severe consequences, not just for their victims but also for themselves. Police investigation, prosecution and trial, school suspension and/or exclusion, consequences for higher education or job applications/eligibility for professions in future, trial by social media even if not by the court – these are all very real consequences for young people who become caught up in this offending.

6.0 The Future

The Online Safety Bill will strengthen the existing laws on the sharing of intimate images without consent and will create additional offences in this area. The Government announced in November last year that the sharing of “deepfake” explicit images or videos which have been made to look like someone without their consent will be criminalised, as will the installation of hidden cameras to take images of people without their consent. Downblousing will also be added to the upskirting offence.

In the aftermath of Everyone’s Invited children are increasingly likely to come forward and report their concerns to a trusted adult. Often it is friends who may initiate a report out of concern for their fellow pupil. This development is to be welcomed, primarily because the welfare of children can only be managed if concerns are shared. But it also means that consequences for those who commit such offences are more likely than they ever have been.



7.0 Glossary

Harassment: is unwanted behaviour that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for the person.

Incapacitated: deprived of strength or power.

Voyeurism: the practice of gaining sexual pleasure from watching others when they are naked or engaged in sexual activity.

Upskirting: the action or practice of privately taking photos or videos at an angle in order to see up someone's clothing.

Gratification: the state of feeling pleasure when something goes well for you or when your desires are satisfied.

Deceive: to cause to believe something that is not true.

Prosecution: the institution and conducting of legal proceedings against someone in respect of a criminal charge.

Incitement: the action of providing unlawful behaviour or urging someone to behave unlawfully

