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**Tip-toeing through minefields  
...Legal & Ethical Issues in Sexual Health**

**Marsh Gelbart 2010**





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## The Law within a sexual health setting

- The law is the base line of all professional activity. To operate outside it runs the risk of instigating legal proceedings or being sued. It is important to have a basic awareness of the legal framework that addresses issues such as sex involving minors and disclosure of information.





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## Past legislation

- The Contagious Diseases Acts of 1864, 1866 and 1869 were draconian attempts to control sex, sexuality and infection
- Allowed the arrest and forced genital examination of women assumed to be “of easy virtue”
- If found to be infected , women could be forcibly detained for 6 months to allow treatment





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## **Matters improve.....**

- The Royal Commission on Venereal Diseases (1913 – 1916) produced a relatively enlightened piece of legislation - the Public Health (Venereal Diseases) Act of 1917
- The Act was radical for its time, establishing a free, confidential, nationwide service for the provision of diagnosis and treatment of venereal disease.



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## **Current baseline legislation**

- **Data Protection Act 1974 – much revised since inception**
- **NHS (Venereal Diseases) Regulations 1974**
- **Updated by the NHS Venereal Disease Directions 1991**
- **In turn supplanted by the NHS Trusts and PCT's (Sexually Transmitted Diseases) Directions of 2000.**

These acts prevent the disclosure of any identifying information about a patient examined or treated for a sexually transmitted disease (including HIV and AIDS) other than to a medical practitioner (or to a person employed under the direction of a medical practitioner) in connection with and for the purpose of either the treatment of the patient and/or the prevention of the spread of the disease



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## Major ethical and legal conundrums

- Maintaining Confidentiality
- The under-age patient
- Partner notification; particularly in the era of HIV





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## Confidentiality issues

- NMC guidelines about patient confidentiality apply
- GUM settings impose an even higher degree of confidentiality than other healthcare settings
- Information about patients should not leave the unit. Notes should not be removed. Computer records and lab test results are encapsulated, separated from the main hospital systems.





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## Conflicts of interests can lead to anxio

- Conflicts of interests can arise between
  - the personal rights of the patient and the public health.
  - the rights of a patient to privacy and the need to initiate treatment
- Suggest an example of each





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## Personal ethics and moral dilemmas

Each Nurse may have to confront situations that affect them at their level of conscience.

For example;

Dispensing contraception to under-16's

Discussing and advising on sexual practices which one disagrees with

Withholding diagnoses or the "full picture" from the index patient's sexual partners





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## **Ethos of the workplace**

Custom and practice in the place of work can heavily influence professional activity.

For example, legally it may be allowable for a health adviser to disclose an HIV positive diagnosis to a patient over the telephone, but the custom and practice of the clinic may say that only the consultant can do this



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## Brainstorm session one

You are a nurse working as a Health Adviser in a GUM clinic. One of your clients is a Surgeon who has been given an HIV positive diagnosis 6 months ago. The Surgeon has returned to work after having taken sick leave. He tells you that he has decided *not* to tell his employer of his HIV status.

What are your initial options? What should you do if the situation remains unchanged



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## Dealing with underage clients can be problematic ... and is a growing problem

- Statistical data from the British National Survey of Sexual Attitudes and Lifestyles (2000) suggest that sexual activity by people under the age of 16 is increasing.
- Teenage pregnancy in the UK is higher than comparable European countries





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## The sudden impact of Victoria Gillick

- In the early 1980's Victoria Gillick attempted to set a legal precedent in England and Wales. This would have meant that medical practitioners could not give young people under the age of 16 medical treatment or provide contraceptive services without parental permission.





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## **Gillick supplanted by Fraser**

- Although Victoria Gillick was initially successful, the restraints she hoped to introduce were negated by the Fraser guidelines of 1985.

In essence –

The parental right to determine whether or not a child below the age of 16 will or will not have medical treatment or access to contraceptive advice, terminates if and when the child achieves sufficient understanding and intelligence to enable him to understand fully what is proposed.



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## Fraser Guidelines

- **These allow an adolescent under 16 to access contraception and treatment if –**
- The young person understands the advice being given.
- The young person cannot be convinced to involve parents/carers or allow the medical practitioner to do so on their behalf.
- It is likely that the young person will begin or continue having intercourse with or without treatment/contraception.
- Unless he or she receives treatment/contraception their physical or mental health (or both) is likely to suffer.
- The young person's best interests require contraceptive advice, treatment or supplies to be given without parental consent.



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## **Sexual Offences Act of 2003**

- An Act to make new provision about sexual offences, their prevention and the protection of children from harm from other sexual acts, and for connected purposes.
- Persons up to the age of 18 are for the purposes of the Act classified as children
- Made clear that sexual activity involving penetration of a child under the age of 13 is considered statutory rape even with consent



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## **Guidelines for working with sexually active young people**

- Act in the best interest of the patient
- Inform, educate advise
- Don't patronise
- Attempt to get permission for disclosure if necessary
- Work within a multi-disciplinary team
- Follow national guidelines



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## Definitions of Partner Notification

*The spectrum of public health activities in which sexual partners of individuals with an STD or HIV infection are notified, counselled on their exposure and offered services. Society of Sexual Health Advisers*

The partner should be given information on:

- The nature of the exposure and the risk of infection
- The need for, and location of the appropriate clinical services: and
- The need to avoid sexual contact until treated and/or counselled



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## Principles of Partner Notification

- Partner notification should be voluntary and not punitive in any way.
- Index patients should have full access to available services whether or not they are willing to co-operate in notification activities





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## Models of HIV Partner Notification

- United Kingdom
  - Voluntary
- Australia
  - Semi-voluntary
- Sweden
  - Compulsory



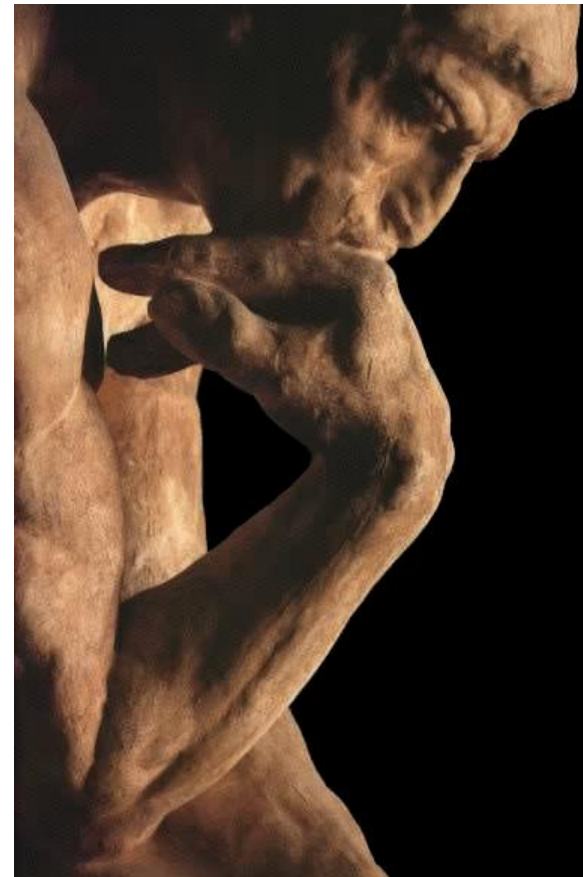


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## Brainstorm session two

- Working in groups, think about the legislation which governs the principles of partner notification in relation to HIV.
- Should the public good outweigh personal liberty?





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## Resources

- HMG (2003). *The Sexual Offences Act*. The Stationery Office Limited. London
- Home Office (2004). *Working within the Sexual Offences Act 2003*. Home Office Communications Directorate.
- <http://www.homeoffice.gov.uk/crime/sexualoffences/legislation/act.html>
- Respond. A charity providing a range of services to victims and perpetrators of sexual abuse. **Helpline 0808 808 0700.**  
**www.respond.org.uk**
- **Sex Education Forum.** Information for professionals on sex education. **www.ncb.org.uk/sef**