

Alert to Pupils: The legal dangers of sexting - what children, young people and adults working with them need to know

David Smellie | 3 February 2016

There is a growing concern amongst parents, teachers, professionals working with young people and those in law enforcement about the risks to which young people are being increasingly exposed through their online activities. Radicalisation and exposure to extremist propaganda is one very topical concern, and is only likely to grow as a threat. However one concern which has been around for some time now, but where the scale of the threat has increased considerably, is that of illegal sexting – or the transfer online of indecent images of children – by which the law means of any minor under the age of 18.

This article does not attempt to address the potential social or psychological consequences of sexting, but those are undoubtedly concerns to be considered. Instead, it focuses specifically on the risk of young people being criminalised by committing criminal offences of which they were unaware – and in the process bringing on themselves and their families potentially life changing consequences through being cautioned or convicted and placed the Sex Offenders Register.

To assist young people and those working with them we have set out below a scenario involving two 16 year olds sexting, and we examine the criminal offences committed in the process. We also provide sources of help and assistance for any young person or adult who is affected or concerned.

Scenario

A 16 year old boy sends an indecent image of himself to his 16 year old girlfriend. She opens the image, keeps it privately for some time and then when their relationship breaks up she sends it to a number of their mutual friends who open it.

Q. What crime has the 16 year old boy committed?

- A. He has committed the following offences under the Protection of Children Act 1978 ("PoCA") or the Criminal Justice Act 1988 ("CJA"):
- to take or permit to be taken or to make an indecent photograph of a child (under 18) (section 1(a) of PoCA). It makes no difference to the law that the image is of himself.

“Children and young people must speak to someone if they are concerned about their own or others' behaviour”

- to distribute or show such indecent photograph (section 1(b) of PoCA).
- to possess an indecent photograph of a child (under 18) (section 160 CJA).

Q. What crime has the 16 year old girl committed?

A. She has committed the following offences:

- to make an indecent photograph of a child (under 18). She "makes" a photograph by opening the image on her phone or computer (which has the effect of creating an image on the hard-drive) (section 1(a) PoCA).
- to distribute or show such indecent photograph (section 1(b) of PoCA).
- to have in her possession such indecent photograph with a view to it being distributed by herself or others (section 1(c) of PoCA).
- to possess an indecent photograph of child (under 18) (section 160 CJA).
- to disclose a private sexual photograph or film if the disclosure is made (a) without the consent of the individual who appears in the photograph or film and (b) with the intention of causing that individual distress (section 33 Criminal Justice and Courts Act 2015). This is often referred to as the new 'revenge pornography' offence.

Q. What crimes have the friends of the 16 year old girl committed to whom she has sent the image?

A. None, if they do not open the image. But if they do they commit the offence of 'making' (s1(a) PoCA) and if they keep it of 'possession' (s160 CJA) and if they show or send to others then of "distribution" (s1(b) PoCA).

Q. What defences are there?

A. Very few, although some exist for married 16 and 17 year olds sharing images with each other. There is obviously a defence available for the police etc for the purposes of detection or investigation of a crime.

Q. What about computer generated images?

A. Both the PoCA and CJA provisions apply equally to pseudo photographs as they do to actual photographs.

Q. What criminal sanctions could be imposed?

A. Much depends on the age of the offender, the severity of the image and other aggravating and mitigating factors. Clearly those who are perceived as 'victims' of sexting are likely to be viewed differently from those who have encouraged or initiated it. However the range of penalties runs from a form of restorative reprimand or police/youth caution through to a youth rehabilitation order, detention and training order or in the most serious cases a custodial sentence.

Q. If a criminal sanction is imposed will the offender be placed on the Sex Offenders register?

- A. Yes, if at least a caution results. The Sex Offenders Register contains the details of anyone convicted or cautioned for a sexual offence against a child. The length of time an individual remains on the register depends on the severity of the offence and their age.

Q. Where can children get additional information?

- A. The Child Exploitation and Online Protection Service (CEOP) operates a website with age appropriate advice for everyone from very young children to parents and teachers. The website is www.thinkuknow.co.uk and it contains videos, fact-sheets and other resources. A fact-sheet on the revenge porn offence is available at www.gov.uk/government/publications/revenge-porn-be-aware-b4-you-share

Q. Who can young people talk to if they have concerns?

- A. Children and young people must speak to someone if they are concerned, either about their own behaviour or that of others. A parent, teacher or other responsible adult in an organisation with whom the child has contact (eg school, charity, church, sports club) is a good starting point. Childline has a helpline 0800 1111 which offers specialist advice to any child concerned about sexting. They have even devised an app called ZIPIT which can be downloaded onto phones for free and which provides advice and tips to children about how to deal with and respond to requests from peers (or others) for naked or inappropriate images.

The app and accompanying Childline advice is available from the attached link <https://www.childline.org.uk/Play/GetInvolved/Pages/sexting-zipit-app.aspx>

A child will not get into any trouble by phoning Childline and seeking their advice and assistance in the first instance.

Conclusion

We hope this article will help inform not only young people but adults working with young people about some of the risks involved in sexting and where to seek help if anyone needs further information or wishes to discuss a concern.

If you require further information on anything covered in this briefing please contact David Smellie (david.smellie@farrer.co.uk; 020 3375 7394), or your usual contact at the firm on 020 3375 7000. Further information can also be found on the [Child Protection](#) page on our website.

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