

Sexual Consent

A Teen Talk kit for Australian schools.



A resource prepared by Monash Education

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All young people need to know the importance of building healthy relationships and identifying those relationships that are unhealthy. Education has a key role to play in this. We want to support young people by ensuring teachers have the best materials to use in schools.

We are confident that teachers will welcome this excellent resource which will help them provide pupils with the skills and knowledge to keep themselves and others informed, healthy and safe.

Learning about consent should begin before young people are sexually active, otherwise it is too late. As part of learning about consent, pupils must learn that the law is clear that sexual activity is illegal for young people under the age of 16. We know, however, that some young people are sexually active before 16, and learning about healthy relationships is crucial to keeping them healthy and safe from abuse and exploitation. Recognising that some young people will be sexually active before the age of 16 does not equate to encouraging underage sexual activity. Furthermore, the key learning set out in this guidance – about respecting the rights of others, communication, negotiation and considering the freedom and capacity of others to make choices – is crucial in a range of situations young people will encounter in their lives.

TEACHING ABOUT CONSENT

AN INTRODUCTION

KEY TERMS

The following definitions are used throughout the document:

Consent is agreement which is given willingly and freely without exploitation, threat or fear, and by a person who has the capacity to give their agreement.

Sexual consent refers to a positive choice to take part in a sexual activity by people who understand the nature and implications of the activity they are agreeing to. Both parties take part not because they have to, but because they want to. Consent must be free – an active, personal choice; it must not be inferred, assumed, coerced or gained by exploitation. In addition, the person giving consent must have the capacity to do so: they should be old enough, have all the information they need to make the decision, and be in a fit state to give consent (and not, for example, with their judgement impaired by alcohol or drugs). It is the person seeking consent who is legally and ethically responsible for ensuring that consent is given and meets these criteria, and because people may change their minds or consent to one activity but not another, the seeker of consent should not see seeking consent as a 'one-off' but rather a continuing process of making sure the other person is consenting.

The key **signs of consent** are that the person clearly wants to engage in the activity and actively demonstrates this verbally and/or through their body language. There should be no ambiguity or confusion about whether consent is given: 'not saying no' is not giving consent. Both ethically and in the law, responsibility for ensuring that consent has been given lies with the person seeking consent. This means being sure that a partner is actively consenting and that none of the conditions which prevent free, informed consent (such as manipulation or exploitation) are present. Consent should be explored in the context of pupils learning about healthy relationships and this should not be solely limited to situations of a sexual nature. For example, when looking at the definition of consent above, pupils may suggest that there are times during a relationship when people do things they wouldn't necessarily want to do but choose to do for a partner or friend. This could be as simple as watching a film which a friend really wants to see. In response, teachers may highlight the idea of a healthy relationship in which both parties care about and respect one another, seek each other's consent for a variety of different things and want to do things for each other, while respecting each other when consent is not given.

Key concepts in a 'healthy relationship' are mutual respect, trust and reciprocity. A healthy relationship can be contrasted with an **unhealthy relationship** – an unequal relationship without mutuality, respect and reciprocity, where one person has more power or control and manipulates or takes advantage of the other.

SECTION 1:

EXPLORING CONSENT AS A CONCEPT AND IN THE LAW

CONSULTING PARENTS

Before beginning to plan lessons on consent, it is worth remembering that the most effective PSHE education is a collaboration between school and home, and this is especially true in relation to sex and relationships education, where statutory guidance from the Department for Education makes clear schools' obligations in relation to consulting parents and carers and involving governors in developing the school sex and relationships education (SRE) policy.

Whenever lessons on specific issues like consent are covered it is very important to notify parents and carers, who will want to be prepared to answer their children's subsequent questions or simply talk together about their children's learning. When informing parents about this particular set of lessons on consent, you may wish to tell them that they have been produced by the leading national body for the subject under funding from the Department for Education.

LAYING THE FOUNDATIONS

All pupils should appreciate the critical importance of building healthy relationships in which both parties respectfully seek consent and respect one another when consent is not given. Pupils must therefore be supported to develop the knowledge, skills, attributes and language necessary to seek, give, not give and retract consent. This process starts by imagining a young person in a real-life situation seeking someone else's consent, or choosing whether or not to give their consent, or whether to withdraw their consent. They will need to:

- understand what a healthy relationship looks like, appreciating that such relationships take many different forms but are always characterised by equity and mutual respect
- understand the concept of consent and what it means in a healthy relationship
- know that both ethically and in law it is the person seeking consent who is responsible for ensuring that consent has been given, and that this cannot simply be assumed
- know their responsibilities if consent is given or not given, or if consent is given and then later withdrawn, and in particular the right of the other person to be respected whatever they decide – this means they need to understand consent not as a 'one-off' decision but rather as a continuing process in which the person seeking consent frequently checks that the other person is still giving consent
- understand exactly what they are asking another to consent to, or what they are being asked to consent to.

Pupils will also need to develop relevant skills and personal attributes. Consent is not just something

we learn academically; it is also something we apply in our daily lives in a range of different contexts. It requires skills, strategies, a strong belief in our own self-worth and respect for others. Even for many adults there is a big difference between knowing your rights and being able to exercise your rights.

Communication about consent is also very important, and involves accurately interpreting both verbal and non-verbal communication. It is important that both types of communication are explored. Strategies for managing manipulation are, unfortunately, also necessary. Alongside learning about healthy relationships, pupils should also learn to recognise and manage the tactics used by people who do not respect them or who seek to undermine their right to not give or to withdraw consent. Teaching pupils about keeping themselves safe is crucial, but in doing so it is important to reinforce that it is the person who engages in an activity without the other person's consent who is responsible, and that in such circumstances the victim is never to blame.

Key linked concepts

Concepts such as mutual respect, empathy, trust, shared responsibility for each other's wellbeing, fairness, negotiation, communication, personal safety, bullying and abuse should all be explored as part of a planned programme about 'healthy relationships'. Risk is another key concept pupils should explore. It is important for children and young people to be curious and adventurous, but at the same time they also need to learn how to keep themselves safe. Learning to understand, manage and mitigate risks is an essential life skill, and a key element of an effective PSHE education programme. This includes taking positive, well-considered risks at an appropriate time and taking sensible steps to keep safe. However, when talking about risk in the context of learning about consent, it is important to reinforce that while people may take risks, and can take steps to mitigate those risks, they are never to blame when others fail to respect their decision not to give consent or to withdraw consent.

In teaching about consent it is important to link it with related issues. Prevailing gender norms – many highly pernicious – are clearly linked to myths, assumptions and misunderstandings about consent. Similarly, online pornography and sexual images shared via social media are widely available to young people and frequently depict situations where consent is not clearly negotiated. These have been shown to have a significant impact on young people's attitudes towards sex and relationships. Consent must also be considered alongside notions of abuse when exploring child sexual exploitation and gang activity. The underlying learning is the same whether the context is a situation where someone is being touched inappropriately, asked to share a sexual image or take part in an illegal activity, or exploited sexually in a group or gang.

Key principles in teaching about consent

When teaching about consent, teachers should determine the needs of their pupils and choose the most appropriate lessons from those provided in section 2 of this pack, bearing in mind how important it is to build on and complement existing learning. The scenarios used in the lessons enable concepts to be explored from a variety of different angles. They can be adapted to fit specific programmes and can be differentiated to meet pupils' needs. However, you should make sure that all lessons:

- are taught in a safe classroom environment
- start from where pupils are in terms of their existing knowledge, understanding, skills, beliefs and attitudes
- are taught in a non-judgemental way
- are grounded in realistic scenarios but not the personal experiences of either pupils or teachers
- are taught by teachers who have adequate support from colleagues
- take pupils' current circumstances and previous experiences into account
- challenge unrealistic social norms
- bear in mind the possible influence of pornography and shared sexual images on pupils' attitudes
- assess pupils' progress.

These requirements are explored in further detail below, together with more detail on key concepts relating to consent and the law relating to consent.

THE IMPORTANCE OF CREATING A SAFE CLASSROOM ENVIRONMENT

It is important that if pupils make personal disclosures to school staff they do so in a suitable, one-to-one setting. It is not appropriate, therefore, to encourage pupils to talk about intimate personal matters in the classroom. This means that before teaching about issues like consent, clear 'ground rules' * should be established or reinforced, and the concepts of anonymity and confidentiality covered at the start of the lesson. When covering confidentiality, pupils should be clear that teachers cannot promise to keep information confidential, and that they will share information with staff members with safeguarding responsibilities if they think pupils are at risk or in danger. Ground rules need to be regularly revisited and, if necessary, renegotiated and reinforced.

Ground rules are most effective when they have been negotiated and agreed with the pupils, rather than imposed by the teacher. Below are some examples to discuss if they do not arise naturally.

Ground rule

What this might mean to pupils

Openness

We will be open and honest, but not discuss directly our own or others' personal/private lives. We will discuss general situations as examples but will not use names or descriptions which could identify anyone. We will not put anyone 'on the spot'.

Keep the conversation in the room

We feel safe discussing general issues relating to sex and relationships within this space, and we know that our teacher will not repeat what is said in the classroom unless they are concerned we are at risk, in which case they will follow the school's safeguarding policy.

Non-judgemental approach

It is okay for us to disagree with another person's point of view but we will not judge, make fun of, or put anybody down. We will 'challenge the opinion not the person'.

Right to pass

Taking part is important. However, we have the right to pass on answering a question or participating in an activity.

Make no assumptions

We will not make assumptions about people's values, attitudes, behaviours, life experiences or feelings.

Listen to others We will listen to the other person's point of view and expect to be listened to.

Using language We will use the correct terms for the things we will be discussing rather than the slang terms, as some people can find them offensive. If we are not sure what the correct term is we will ask our teacher.

Asking questions We know that there are no stupid questions. We do not ask questions to deliberately try to embarrass anyone else. There is a question box available for anonymous questions.

Seeking help and advice

If we need further help or advice, we know how and where to seek it confidentially, both in school and in the community. We will encourage friends to seek help if we think they need it.

It is important to recognise that discussions about consent, even in the abstract, may trigger memories of events in pupils' own lives, including moments when they realise that an event in their past was non-consensual. Whatever their role was in those circumstances, this could be a very serious safeguarding issue and should be treated as such.

If, in spite of clearly set ground rules and signposting of opportunities for confidential matters to be discussed outside the classroom, a disclosure is made in a lesson, teachers should follow their school's safeguarding policy. The school's safeguarding policy should also be followed if pupils indicate that they wish to opt out of lessons on consent, either before the lesson starts or during the lesson, because of a prior experience relating to a non-consensual situation.

During lessons, teachers should make clear the opportunities for young people to talk about personal situations in a suitable one-to-one setting. It is vital that pupils are given reassurance about the consequences of seeking that support.

PUPILS' PRIOR KNOWLEDGE, UNDERSTANDING, SKILLS, BELIEFS AND ATTITUDES

For PSHE education to be relevant, meaningful and engaging for pupils, and for assessment of learning to take place, it is important to gauge pupils' relevant prior knowledge, understanding, skills, beliefs and attitudes (assessment for learning). This is explored in more detail in the section on reflection and assessment below. Before teaching about consent, it is especially important to understand how pupils are already making sense of this complex concept. A baseline assessment is built into Lesson 1 to help with selecting and planning subsequent lessons as well as with assessing progress. Alternatively, you may choose to use your school's existing assessment processes.

When carrying out baseline assessments in relation to consent, teachers should consider whether pupils focus on the 'giver' of consent or the 'seeker', or both. Common misunderstandings about consent often arise because of a lack of focus on seeking consent and disproportionate focus on giving consent. Pupils' understanding of healthy relationships should also be considered. Teachers should look for differences in attitudes and knowledge based on sex, sexual orientation and gender identity.

REFLECTION AND ASSESSMENT

It is important for pupils to have opportunities to draw together and reflect on their learning; for teachers to feel confident that learning has taken place; and for both pupils and teachers to identify future learning needs. Clear learning objectives (the aim and purpose of the lesson) and intended learning outcomes (what pupils will be able to demonstrate at the end of the lesson) are provided as the starting point of each lesson plan in section 2 of this guidance document.

Pupils' existing knowledge, understanding, skills, beliefs and attitudes should be identified and used both to plan relevant learning and assess pupils' progress. This also allows pupils to reflect on their own learning and its relevance for their lives. Assessment in PSHE education should not simply focus on factual knowledge. It should provide opportunities to assess:

- an increase in knowledge (Before I only knew ... now I also know ...)
- an increase in understanding (I always knew ... but now I can see how it connects to ... and now I can see how I could use this in my life)
- a change or reconfirmation of a belief (I used to feel ... but I now feel ...)
- a richer vocabulary (Before I would have said ... but now I can say ...)
- increased competence in skills (Before I didn't know how to ... but now I know how to ...)
- new strategies acquired (Before I wouldn't have known how to ... but now I know new/more effective ways to ...)
- an increased confidence (Before I could/would say and do ... but now I feel I am able to say and do ...)
- changed and challenged assumptions (Before I thought that ... but now I realise that was just a myth or a stereotype).

Teachers may also include more formal activities to assess and gather evidence of pupils' progress at the end of a lesson or series of lessons. An effective way of doing this is to revisit the baseline activity. Activities such as 'mind maps' or 'draw and write' exercises can be revisited, with the pupils using a different coloured pen to add additional thoughts, information and ideas, correct their original misconceptions and fill gaps in their prior knowledge. These activities provide assessment evidence in their own right. In addition, if success criteria have been established, progress could be assessed against these criteria to make a judgement on whether pupils are 'working towards', 'working at' or 'working beyond' the intended outcome for that piece of learning.

While it should not be 'marked', personal reflection in PSHE education lessons is essential, especially when learning about issues such as getting and giving consent. Pupils need opportunities to consider how new learning will be relevant in their own lives, both now and in the future. Reflection is therefore a valid and valuable component of PSHE assessment. Sometimes pupils may reflect in writing or through discussion, but it is often more appropriate for their thoughts not to be recorded. Equally, it is important to recognise and respect that pupils may not feel comfortable sharing all of their personal reflections with peers or staff. It is perfectly acceptable, and an equally valid part of the assessment process, to pose questions for private reflection only.

TEACHING IN A NON-JUDGEMENTAL WAY

It is a key principle of PSHE education that there is a positive approach to learning which does not attempt to induce shock or guilt but focuses on what pupils can do to keep themselves and others healthy and safe. In encouraging pupils to share their existing understanding about consent, however, teachers may identify some preconceived ideas on the subject, based on personal experience or what they have heard or seen from friends, family or the media.

Teachers should not be judgemental when confronted with young people's pre-existing views on consent, some of which may directly contradict the standards set out in this document. Teachers should aim to 'take pupils on a journey', encouraging them to understand the notion of consent and why consent as part of a healthy relationship is so important. However, there may be instances when what pupils say raises such concern that teachers are obliged to share it with others in line with the school's safeguarding policy, as set out above.

ENSURING TEACHERS HAVE THE RIGHT SUPPORT

The issues explored when teaching about consent may affect teachers personally. Before teaching a lesson on consent, it may be helpful to prepare by talking to your line manager or other colleagues about any concerns that you might have. 'Team-teaching' lessons may be helpful, both in providing support in the classroom and afterwards if it is needed. As set out in the previous section, you should prepare for the possibility that some pupils will express views which are contradictory to the principles of consent set out in this document.

GROUNDING TEACHING IN 'REAL-LIFE' CONTEXTS

Self-reflection is important when learning about consent, and consent is therefore best explored in contexts which are relevant to pupils' lives. However, creating some emotional distance is also important. For this reason the lessons in section 2 suggest using fictional scenarios which pupils may be able to identify with. In a number of instances, pupils are encouraged to provide advice to characters in these fictional scenarios, but this exploration of 'something happening to someone else' is very different from talking about their own experiences. As set out above, any personal disclosures should be supported in a safe context outside of the main plenary.

TAKING SEX, SEXUAL ORIENTATION, GENDER IDENTITY AND BACKGROUND INTO ACCOUNT

A key principle of high-quality PSHE education is that it should be inclusive and relevant for all pupils. For this reason, the source material provided in this guidance is gender-neutral and does not refer to the socio-economic, cultural or family background of those involved or their sexual orientation. These factors remain extremely important, however, and you should bear in mind the following:

- As set out above, young people's understanding of consent can be distinctly gendered (in other words, consent is understood differently according to gender).
- Young women are disproportionately more likely to experience situations in which their consent is not respected, and young men are disproportionately more likely to be the perpetrators in such situations. Research suggests that one in three teenage girls have experienced sexual violence from a partner; the same study suggested that 16% of boys had experienced sexual violence from a partner.
- Pupils' sexual orientation, gender identity and socio-economic and cultural background, as well as whether they have special educational needs or disabilities, may also have an impact on their understanding of consent and vulnerability to non-consensual situations. For example, LGBT pupils who are not 'out' may be more vulnerable to coercion, exploitation or manipulation from others who know their sexual orientation and gender identity and seek to take advantage of the situation.

Given that factors such as sex, gender identity, sexual orientation and socio-economic, cultural and family background may have an impact both on pupils' experiences and on their expectations of what constitutes consent, establishing prior learning and giving as much thought to pupils' personal circumstances as possible is essential before teaching about consent begins. Pointers in the lesson plans provided enable teachers to introduce these factors at the appropriate time. You will also need to differentiate lessons for pupils with special educational needs and address the particular vulnerabilities of this group, as outlined in the introduction to the lesson plans.

It is important to note that the lessons provided explore consent in same-sex and opposite-sex relationships and assumes that learning about sexual orientation and gender identity is already an integral part of the school's sex and relationships education programme. If this is not the case, we strongly recommend that this is addressed before using the material in this lesson.

KEY CONCEPTS RELATING TO CONSENT

Concepts such as trust and loyalty, assumptions and unwritten rules, vulnerability, coercion, manipulation and exploitation are very important and are likely to arise in lessons about consent. Some lessons focus specifically on these concepts, but they are often interrelated and should always be considered before teaching any lesson.

Trust and loyalty

In relationships, people usually give their trust, and later their consent, to others based on their experience of being with them. Some people need time to establish this trust; others may feel able to trust someone else without knowing them that well. This can be especially true if they are attracted to another person or where alcohol or drugs are involved, or where they have friends in common. It is therefore important to reinforce the message that healthy scepticism does not make you 'disloyal'.

Assumptions, myths and unwritten rules

Pupils' understanding of consent can be influenced by 'unwritten rules', generally accepted norms or conventions that no one has written down and may never have been discussed aloud, but run in the background of our lives. They can be a very powerful influence on our decisions, and are a very important part of teaching about consent. Unwritten rules can, for example, lead to the mistaken belief that giving consent to one activity means you are giving tacit consent to another. It needs to be made clear to pupils that, for instance, consent to 'come over to my place to watch a film' is not consent to be kissed; consent to being kissed does not mean consent to being touched on other parts of the body; and consent to being touched is not consent to have sex. In short, pupils need to understand that consent should never be assumed; instead, they should be encouraged to actively seek consent. Similarly, young people seeking consent must be aware that they should never assume consent on the basis that it has been given on previous occasions ('you agreed last time, so you must be willing this time'). Everyone has the right to change their mind or to feel differently at different times and in different situations. Consent is not a 'one-off' and the right to change one's mind, to feel differently or to consent one thing or not another always needs to be respected. This means there is a responsibility on the seeker of consent to check that consent is being given rather than assume that just because consent was given once for one activity, consent is still being given.

When teaching about consent, it is also important to challenge harmful myths relating to sex and relationships, many of which are heavily gendered (men can't control themselves when aroused, or women need to be persuaded to have a sexual relationship) and gendered double standards (young men who have lots of sexual partners are 'experienced', but young women who have lots of sexual partners are 'easy'). Believing these myths can put pressure on young people, is disrespectful to both genders and may encourage a misplaced assumption of consent.

Coercion

Agreement that is brought about by wearing the other person down, intimidation, physical threats or emotional threats is not consent. Sometimes, coercion is subtle and plays on unwritten rules or our own vulnerabilities: 'Of course you want to, everybody wants to! It's not normal not to want to. You don't want the others thinking you're weird/frigid do you?' Coercion can also involve

threatening to break a confidence: for example, LGBT pupils who are not 'out' may be more vulnerable to coercion from others who know their sexual orientation and gender identity and threaten to make this public.

When exploring this concept, pupils should learn that no matter what is actually said, agreement sought or given under coercion is not consent. It is also important for them to recognise that a refusal to give consent does not have to be justified or defended to others. It is enough simply not to want to. This links to issues of personal safety and, in the case of a relationship, abuse and the need to understand when it is time to walk away from a relationship or find help and support.

Vulnerability

For a range of reasons, such as age, level of maturity, and special educational needs or disability, some people are more vulnerable than others. Extra care must be taken when seeking the consent of vulnerable people, and particular consideration must be given to their capacity to give consent (based on their age and development) and any asymmetry of power or knowledge in the relationship (where one is older or more mature).

Drugs and alcohol are 'dis-inhibitors' and can break down resistance to pressure, even for those who are not generally vulnerable. When under the influence of alcohol or drugs, people can make choices and take risks that they would not take when sober, and may trust people they might not otherwise trust. Taking advantage of another's vulnerability is both ethically unacceptable and has serious legal consequences.

When discussing these issues, pupils may argue that when two people make a free and informed choice to drink together they know where this may lead. When such points are raised, pupils need to understand that agreeing to drink together is not consent to anything more (see the section above on 'assumptions') and everyone has the right to change their mind. Critically, they should learn that a young person who is so drunk that they are unable to accurately assess whether the other person is consenting, or to give their own consent, is putting them both in a highly vulnerable position which may have very serious consequences. Young people should understand that they need to be very careful in such situations and that, in short, they should not get so drunk that they are either unable to seek consent or to give consent. They should also have rehearsed strategies for seeking help if they feel they are approaching this point.

Manipulation

This is an attempt to gain someone's agreement by engineering a situation to increase their vulnerability, for example trying to get someone drunk or spiking their drink. Both undermine the other person's freedom and capacity to consent to sexual activity and therefore have serious potential legal consequences.

Manipulation can also be subtle. If statements such as 'you're my only partner' or 'of course I don't have an infection' turn out to be untrue, then these would constitute manipulation and would undermine any agreement which has been given because of them. While people may not always share everything about themselves with their partners, withholding information about something

which one could reasonably expect would change the other's mind about engaging in a sexual activity is wrong, and could be a serious criminal offence.

Exploitation

Vulnerable young people in need of emotional support, shelter, food, money, alcohol or drugs are at risk of abuse by people who may offer support on the condition that they agree to sexual activity. Vulnerable young people need to know where and how to access pastoral support in school and from wider support services. It is equally important for all young people to understand that they are not being disloyal if they seek help over concerns they have about a friend who may be vulnerable. If a pupil is considered at risk of exploitation, the school should always follow its safe guarding policy.

SEXUAL CONSENT AND THE LAW

The legal age of consent to sexual activity is 16. Consent is defined in law as agreement by choice made by someone with the freedom and capacity to consent. Under the law, it is the person seeking consent who is responsible for ensuring that these conditions are met. Full details on the relevant legislation are available in our guidance on the law on sexual consent and Lesson 2 gives the opportunity to explore the concepts with pupils.

Teaching children under the age of 16 about the legal age of consent

The law is clear that sexual activity is illegal for young people under the age of 16, and while pupils must learn this, it is good practice for learning about consent to begin before 16. We know that some young people may be sexually active before 16 and learning about healthy relationships is crucial to keeping them healthy and safe from abuse and exploitation. Good sex and relationships education has been shown to delay first sexual activity and the key learning set out in this guidance – about respecting the rights of others, communication, negotiation and considering the freedom and capacity of others to make choices – is crucial in a range of situations young people will encounter in their lives. Learning about consent after they have been in such situations is too late.

Pupil wellbeing is paramount and schools should always ensure that pupils have the information they need to get help if required. It is important that pupils understand that sexual health services offer confidential advice and support to people who have not yet reached the age of consent. Recognising that some young people will be sexually active before the age of 16 does not equate to encouraging underage sexual activity.

Despite what young people may feel in a given situation, there are legal boundaries to their ability to give consent, so any voluntary agreement to sexual activity by a child under 16 cannot be defined as consent in law. Below the age of consent, the law protects young people by prohibiting them from engaging in certain behaviours. It is important that young people fully understand these laws and recognise that they protect them from exploitation.

It is also important that young people understand that the age of consent is the age when they can legally consent to have sex, not the age when they should or must do so. They must understand that in cases where a person over the age of 16 has sex with someone under 16, it is the person over 16 who commits the offence, not the younger person. The only exception to this is if an offence is being committed by the younger person, for example in the case of an attack on a 16-year-old by a 15-year-old, where the 16-year-old would clearly be the victim despite being older. It is also important to note that there are some situations where it is illegal to have sex with someone under the age of 18, for example if the other person is in 'a position of trust', such as a teacher with their pupil.